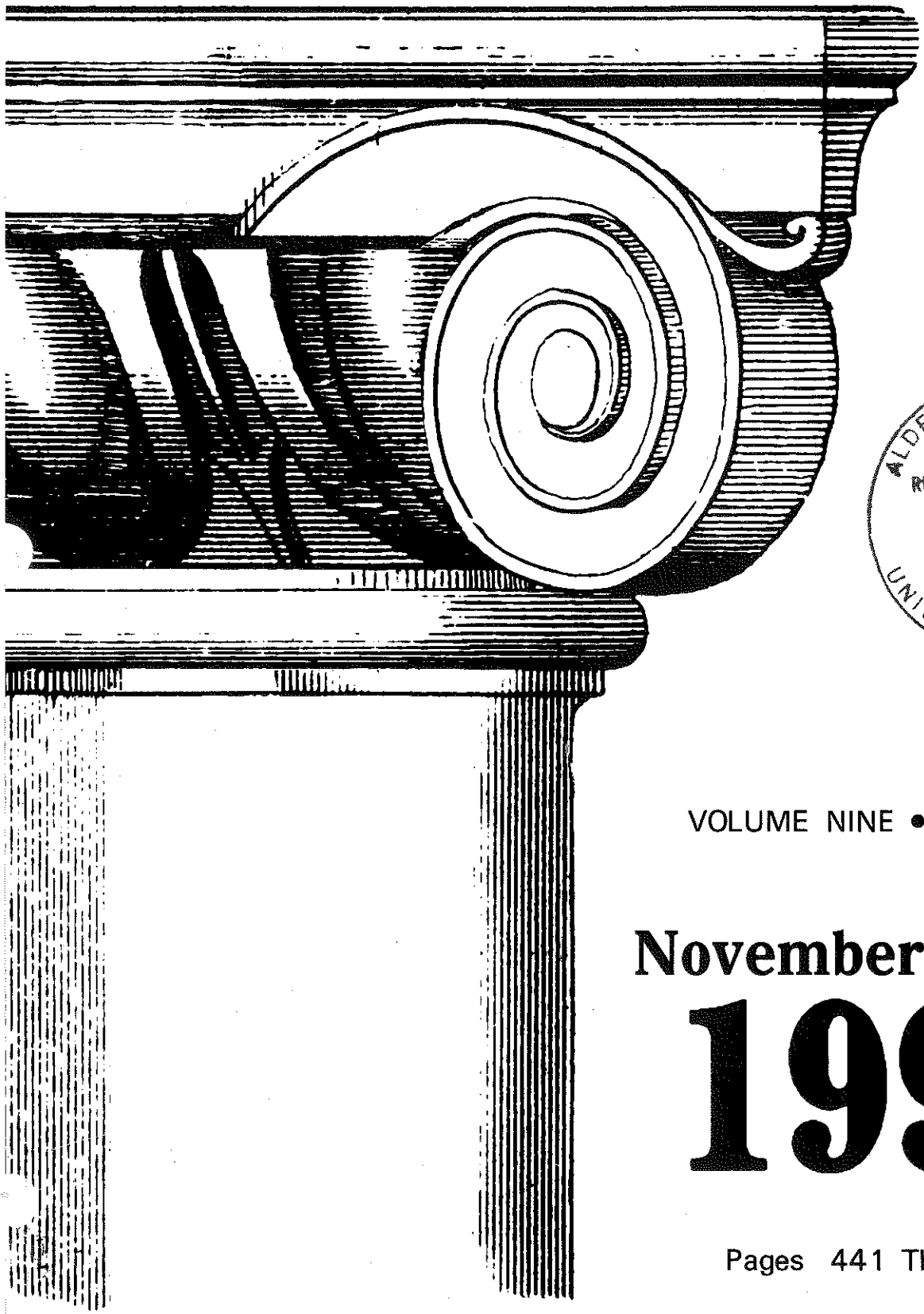
VIRGINIA REGISTER

OF REGULATIONS



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VIRGINIA REGISTER

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative.

The *Virginia Register* has several functions. The full text of all regulations, both as proposed and as finally adopted or changed by amendment are required by law to be published in the *Virginia Register of Regulations.*

In addition, the *Virginia Register* is a source of other information about state government, including all Emergency Regulations issued by the Governor, and Executive Orders, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of all public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the Virginia Register a notice of proposed action; a basis, purpose, impact and summary statement; a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations.

Under the provisions of the Administrative Process Act, the Registrar has the right to publish a summary, rather than the full text, of a regulation which is considered to be too lengthy. In such case, the full text of the regulation will be available for public inspection at the office of the Registrar and at the office of the promulgating agency.

Following publication of the proposal in the *Virginia Register*, sixty days must elapse before the agency may take action on the proposal.

During this time, the Governor and the General Assembly will review the proposed regulations. The Governor will transmit his comments on the regulations to the Registrar and the agency and such comments will be published in the *Virginia Register.*

Upon receipt of the Governor's comment on a proposed regulation, the agency (i) may adopt the proposed regulation, if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the *Virginia Registrar* and the promulgating agency. The objection will be published in the *Virginia Register.* Within twenty-one days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative Committee, and the Governor

When final action is taken, the promulgating agency must again publish the text of the regulation, as adopted, highlighting and explaining any substantial changes in the final regulation. A thirty-day final adoption period will commence upon publication in the *Virginia Register.*

The Governor will review the final regulation during this time and if he objects, forward his objection to the Registrar and the agency. His objection will be published in the *Virginia Register.* If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days and require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

Proposed action on regulations may be withdrawn by the promulgating agency at any time before the regulation becomes final.

EMERGENCY REGULATIONS

If an agency determines that an emergency situation exists, it then requests the Governor to issue an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited in time and cannot exceed a twelve-months duration. The emergency regulations will be published as quickly as possible in the *Virginia Register.*

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures (See "Adoption, Amendment, and Repeal of Regulations," above). If the agency does not choose to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 of Chapter 1.1:1 (§§ 9-6.14:6 through 9-6.14:9) of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The Virginia Register is cited by volume, issue, page number, and date. **1:3 VA.R. 75-77 November 12, 1984** refers to Volume 1, Issue 3, pages 75 through 77 of the Virginia Register issued on November 12, 1984.

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VIRGINIA REGISTER OF REGULATIONS

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July 1992 through September 1993

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Aug. 5	Aug. 24
Aug. 19	Sept. 7
Sept. 2	Sept. 21
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† Indicates entries since last publication of the Virginia Register

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider promulgating regulations entitled: **VR 115-04-28. Regulations Governing the Oxygenation of Gasoline.** The purpose of the proposed action is to adopt a regulation to supersede an emergency regulation adopted by the Board of Agriculture and Consumer Services on September 30, 1992, governing oxygenation of gasoline.

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Written comments may be submitted until December 4, 1992.

Contact: J. Alan Rogers, Program Manager, Office of Weights and Measures, P.O. Box 1163, Room 402, Richmond, VA 23209, telephone (804) 786-2476.

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution–Incorporating Requirements of Title V of the Clean Air Act.** The purpose of the proposed action is to amend § 120-08-04 to incorporate the requirements of Title V of the Clean Air Act, as amended in November 1990.

Public meeting: A public meeting will be held by the Department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10 a.m. on November 18, 1992, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad hoc advisory group: The Department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by close of business October 21, 1992, and provide your name, address, phone number and the organization you represent (if any). Facsimile copies will be accepted only if followed by receipt of the original within three business days. Notification of the composition of the ad hoc advisory group will be sent to all applicants by November 4, 1992. If you are selected to be on the group, you are encouraged to attend the public meeting mentioned above and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus.

Federal statutory requirements: Title V of the Clean Air Act (the Act) as amended November 1990 provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993.

The operating permits issued under this program should enhance the ability of EPA, the states, and citizens to enforce the requirements of the Act; clarify for the permitted sources exactly which air quality requirements apply; and also aid in implementing the Act by providing states with permit fees to support their programs.

A permit sets out for both the Department and the owner the regulatory requirements appropriate to that source's operation. The benefits are that the operator or owner knows what requirements must be fulfilled and the Department has an agreement with the owner through the permit that these requirements will be carried out. It enables the Department to more efficiently and effectively carry out its source surveillance activities while providing a clear mandate for each source on what its responsibility entails. An operating permit inclusive of all requirements pertaining to the source ensures that the owner of the source is fully informed of all applicable state and federal regulations. The operating permit program provides that both the Department and the owner conduct a periodic review of polluting activities to ensure that effective emission reductions are taking place.

At all facilities, operating conditions change over time, new technologies become available, and new regulatory requirements are developed that may necessarily change

original permit conditions. Operating permits provide a mechanism to adapt to these changing conditions.

Owners of sources subject to compliance programs through new regulatory initiatives or other air quality planning requirements must sign a consent order which is, in effect, an agreement between the Department and the owner for the source to meet those initiatives or requirements. An operating permit program supplants the use of consent orders under these conditions and removes the negative connotation that comes with signed consent orders. Consent orders are generally used after a facility has been found in violation of the regulations when the Department needs an enforceable administrative mechanism to ensure that the facility's operation will change to avoid a violation in the future.

Current federal policy allows the use of emissions trading activities by sources to meet emission standards in a more cost effective manner. These activities include bubbling, netting, offsetting and banking. The operating permit provides a mechanism for implementing and enforcing emissions trading activities, provided EPA policy or a state generic policy, as appropriate, is followed. Currently these activities are enforced using consent orders which, as explained above, have a negative connotation.

An operating permit provides the mechanism for the Department to assess any facility's compliance with the air quality standards and regulations that provide a basis to protect human health and the environment. The permit provides a direct enforcement mechanism for the Department to determine a facility's compliance whereas the enforcement of the standards and regulations without the permit is more difficult because specific conditions for the individual facility have not been derived from those standards and regulations.

The public participation requirements of the operating permit program provide an opportunity for citizens to review and to provide comments about the compliance performance of facilities emitting air pollutants along with the Department.

The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source.

Section 502 (a) requires that the following sources be covered under the provisions of any Title V program:

1. Affected sources as defined under the acid deposition provisions of Title IV of the Act.

2. Major sources, defined as follows:

a. any source of air pollutants with the potential to emit 100 tons per year (tpy) or more of any pollutant;

b. in nonattainment areas designated as serious, any source emitting 50 tpy or more (in Virginia, the northern Virginia area is designated serious for ozone); for severe or extreme nonattainment areas, sources emitting 25 and 10 tpy, respectively; and

c. any source with the potential to emit 10 tpy of any hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants regulated under section 112.

3. Any other source, including an area source, subject to a hazardous air pollutant standard under section 112.

4. Any source subject to new source performance standards under section 111.

5. Any source required to have a preconstruction review permit pursuant to the requirements of the PSD program under Title I, part C or the nonattainment area new source review program under Title I, part D.

6. Any other stationary source in a category that EPA designates in whole or in part by regulation, after notice and comment.

Section 502 (b) sets out the minimum elements that must be included in each program, as follows:

1. Requirements for permit applications, including standard application forms, compliance plans and criteria for determining the completeness of applications.

2. Monitoring and reporting requirements.

3. A permit fee system.

4. Provisions for adequate personnel and funding to administer the program.

5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act.

6. Authority to issue permits for a fixed term, not to exceed five years.

7. Authority to assure that permits incorporate emission limitations in an applicable implementation plan.

8. Authority to terminate, modify, or revoke and reissue permits for cause, which is not further defined, and a requirement to reopen permits in

certain circumstances.

9. Authority to enforce permits, permit fees, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than $10,000 per day, and appropriate criminal penalties.

10. Authority to assure that no permit will be issued if EPA objects to its issuance in a timely fashion.

11. Procedures for (a) expeditiously determining when applications are complete, (b) processing applications, (c) public notice, including offering an opportunity for public comment, and a hearing on applications, (d) expeditious review of permit actions, and (e) state court review of the final permit action.

12. Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act shall be treated as a final permit action solely to allow judicial review by the applicant or anyone also who participated in the public comment process to compel action on the application.

13. Authority and procedures to make available to the public any permit application, compliance plan, permit emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions of section 114(c) of the Act; the contents of the permit itself are not entitled to confidentiality protection.

14. Provisions to allow operational flexibility at the permitted facility.

Section 503 (b) requires that applicants shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements of the Act. The compliance plan must include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every six months. The permittee must also certify that the facility is in compliance with any applicable requirements of the permit no less frequently than annually. The permittee must also promptly report any deviations from permit requirements to the permitting authority.

Section 503 (d) specifies that a source's failure to have an operating permit shall not be a violation of the Act if the source owner submitted a timely and complete application for a permit and if he submitted other information required or requested to process the application in a timely fashion.

Section 503 (e) requires that a copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. Any information that is required of an applicant to submit and which is entitled to protection from disclosure under section 114 (c) of the Act can be submitted separately.

Section 504 specifies what is to be included in each operating permit issued under this program. Section 504 (a) requires that each permit shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements, including the requirements of any state implementation plan.

Section 504 (b) indicates that the EPA administrator may prescribe, by rule, procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated by the Act. Continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.

Section 504 (c) requires that each permit issued under the program shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to applicable regulations issued under 504 (b). Any report required to be submitted by a permit issued to a corporation shall be signed by a responsible corporate official, who shall certify its accuracy.

Section 504 (d) allows the state permitting authority to issue a general permit covering numerous similar sources after notice and opportunity for public hearing. Any general permit shall comply with all program requirements. Any source governed by a general permit regulation must still file an application under this program.

Section 504 (e) allows the state permitting authority to issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of the Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under the Act. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location.

Section 504 (f) provides a permit shield for permittees. This section specifies that compliance with a permit issued in accordance with Title V shall be deemed in compliance with Section 502, or with the program. And unless otherwise provided by the EPA administrator and by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act that relate to the permittee, if:

1. the permit includes the applicable requirements of those provisions, or

2. the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Section 503 (c) specifies that all sources required to be permitted under a Title V program are required to submit an application within 12 months after the date EPA approves the state's program. The state permitting authority may specify an earlier date for submitting applications. The state permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval, and must act on at least one-third of the permits each year over a period not to exceed three years after approval of the program. After acting on the initial application, the permitting authority must issue or deny a complete application within 18 months after receiving that application.

Section 505 (a) requires the state permitting authority to send EPA a copy of each permit application and each permit proposed to be issued. For each permit application or proposed permit sent to EPA, Section 505 (a) also requires the permitting authority to notify all states whose air quality may be affected and that are contiguous to the state in which the emission originates, or that are within 50 miles of the source. This notice must provide an opportunity for these affected states to submit written recommendations respecting the issuance of the permit and its terms and conditions. Section 505 (b) provides for EPA objections to any permit which contains provisions that are not in compliance with the requirements of the Act or with the applicable State Implementation Plan. This section also provides that any person may petition the EPA administrator within 60 days after the expiration of the 45-day review period, if no objections were submitted by the EPA administrator. Furthermore the state permitting authority may not issue the permit if the EPA administrator objects to its issuance unless the permit is revised to meet the objection. If the state permitting authority fails to revise and submit the permit, EPA must issue or deny the permit in accordance with the requirements of Title V. Under section 505 (d), the permit program submitted by the state may not have to meet these requirements for sources other than major sources covered by the program. Section 505 (e) allows the EPA administrator to terminate, modify, or revoke and reissue an operating permit issued under a state's program, if he finds that cause exists for such action.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until November 20, 1992, to Director of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240.

Contact: Nancy S. Saylor, Policy Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution--Permit Fee Requirements.** The purpose of the proposed action is to develop a regulation to meet the permit fee requirements of Title V of the Clean Air Act and of § 10.1-1322 of the Code of Virginia.

Public meeting: A public meeting will be held by the Department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10 a.m. on November 19, 1992, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad hoc advisory group: The Department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by close of business October 21, 1992, and provide your name, address, phone number and the organization you represent (if any). Facsimile copies will be accepted only if followed by receipt of the original within three business days. Notification of the composition of the ad hoc advisory group will be sent to all applicants by November 4, 1992. If you are selected to be on the group, you are encouraged to attend the public meeting mentioned above and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus.

Federal and state statutory requirements. Title V of the Clean Air Act (the Act) as amended November 1990 provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993.

One of the requirements of Title V is for states to develop permit fee programs to use in funding the costs of

developing, implementing and enforcing the other requirements of Title V. The permit fees obtained should fund the resources necessary for states to carry out their programs. The basis of the required permit fees is a charge per ton of emissions of regulated pollutants emitted by stationary sources covered under Title V. While the permit fee program provides a benefit to state agencies, the program also provides other benefits related to air quality. Permit fees charged for emissions may provide an incentive to stationary sources to keep their emissions as low as possible. The charging of permit fees also more directly allows the costs of the air quality programs to be paid for by those who create the pollution, rather than indirectly through the state taxation system.

The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. In addition to requiring that states develop operating permit programs, Congress is also requiring that states develop permit fee programs to pay for the cost of the programs.

Section 502 (b)(3) sets out the minimum elements that must be included in each permit fee program. The owner or operator of all sources subject to the requirement to obtain a permit must pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V, including the costs of the small business technical assistance program. Section 502 (b)(3)(A) specifies what is meant by reasonable costs, as follows:

1. Reviewing and acting upon any application for a permit.

2. Implementing and enforcing the terms and conditions of the permit, but not including any court costs or other costs associated with any enforcement action.

3. Emissions and ambient monitoring.

4. Preparing generally applicable regulations or guidance.

5. Modeling, analyses, and demonstrations.

6. Preparing inventories and tracking emissions.

Section 502 (b)(3)(B) specifies the requirements for the total amount of fees to be collected by the state permitting authority, as follows:

1. The state must demonstrate that, except as otherwise provided, the program will collect in the aggregate from all sources subject to the program an amount not less than $25 per ton of each regulated pollutant, or such other amount as the EPA administrator may determine adequately reflects the reasonable costs of the permit program.

2. "Regulated pollutant" means (a) a volatile organic compound; (b) each pollutant regulated under Section 111 or 112 of the Act; and (c) each pollutant for which a national primary ambient air quality standard has been promulgated (except carbon monoxide).

3. In determining the amount to be collected, the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that pollutant.

4. The requirements of paragraph 1 above will not apply if the permitting authority can demonstrate that collecting an amount less than $25 per ton of each regulated pollutant will meet the requirements of 502 (b)(3)(A).

5. The fee calculated under paragraph 1 above shall be increased consistent with the need to cover the reasonable costs authorized by 502 (b)(3)(A) in each year beginning after the year of the enactment of the Act by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

Section 502 (b)(3)(C) specifies the requirements of a permit fee program if the EPA administrator finds that the fee provisions of a state program are inadequate or if the Title V operating permit program itself is inadequate and EPA has to administer the fee program itself.

Section 507 (f) concerning fees and the Small Business Technical Assistance Program specifies that the state may reduce any fee required under Title V to take into account the financial resources of small business stationary sources.

Section 408 (c)(4) of Title IV concerning sources of acid deposition states that Phase I affected units shall not be required to pay permit fees during the years 1995 through 1999.

The Department has the statutory authority under state law to develop a Title V permit fee program. Section 10.1-1322 of the Air Pollution Control Law of Virginia specifies the supplementary requirements for developing the Title V fee program in Virginia.

Section 10.1-1322 B specifies that the board may require the payment and collection of annual permit program fees for air pollution sources. The law directs that the fees must be based on actual emissions of each regulated pollutant as defined in Section 502 of the Act, in tons per

year. The law stipulates that the regulation cannot charge for emissions in excess of 4,000 tons per year of each pollutant for each source. The law restricts the program to obtaining a base year amount of $25 per ton, using 1990 as the base year. It does allow annual adjustments of this amount using the Consumer Price Index, as directed in Section 502 (b)(3)(B). The fees obtained are to approximate the direct and indirect costs of the program as directed in Section 502 (b)(3)(A).

When adopting regulations for these fees, the board is directed to take into account permit fees charged in neighboring states so that existing or prospective industry in Virginia will not be placed at an economic disadvantage.

Statutory Authority: §§ 10.1-1308 and 10.1-1322 of the Code of Virginia.

Written comments may be submitted until November 20, 1992, to Director of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240.

Contact: Kathleen Sands, Policy Analyst, Division of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240, telephone 225-2722.

BOARD FOR COSMETOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Cosmetology intends to consider promulgating regulations entitled: **Virginia Board for Cosmetology Esthetician/Skin Care Regulations.** The purpose of the proposed action is to regulate the practice of invasive skin care performed by estheticians who administer cosmetic treatments.

Statutory Authority: § 54.1-1202 of the Code of Virginia.

Written comments may be submitted until December 5, 1992.

Contact: Demetra Kontos, Assistant Director, Cosmetology Board, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8509.

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Dentistry intends to consider amending regulations entitled: **VR 255-01-1. Board of Dentistry Regulations.** The purpose of the proposed action is to consider the following amendments:

1. The Public Participation Guidelines - § 1.2 D.

2. Certification of dental assistants for Schedule VI topical medicinal agents - §§ 1.4 M and 5.4 1 (Emergency Regulation).

3. Reinstatement Fees and Procedures - § 1.3 D.

4. Reinstatement procedure following suspension or revocation of license and fee.

5. Licensure examinations - grace period for licensure - § 2.2 A and B.

6. Reciprocal licensure for dentists - § 2.3 A.

7. Endorsement for dentists.

8. Clarification of § 3.1 A 2 regarding educational requirements to administer general anesthesia.

9. Requirement for dentists to keep all insurance claim forms - § 4.1 B 6.

10. Regulation of dental hygiene, except level of supervision.

11. Controlled use of trade names.

12. Advertisement, claiming to be a specialist - § 4.4 F 4.

13. Develop Continuing Education requirements for dentists and dental hygienists.

14. Other minor clarifications and nonsubstantive changes.

Virginia Board of Dentistry Regulatory - Legislative Committee will meet on November 21, 1992, to discuss and recommend changes to the regulation of dentistry and dental hygiene.

Statutory Authority: §§ 54.1-2700 through 54.1-2728 of the Code of Virginia.

Written comments may be submitted until November 17, 1992.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Drive, Richmond, Virginia 23229-5005, telephone (804) 662-9906.

BOARD FOR GEOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the Board for Geology intends to consider amending regulations entitled: **VR 335-01-2. Rules and Regulations of the Board for Geology.** The purpose of the proposed action is to review regulatory content and fees.

Statutory Authority: §§ 54.1-1400 through 54.1-1405 of the Code of Virginia.

Written comments may be submitted until November 20, 1992.

Contact: Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **Virginia State Medical Facilities Plan.** The purpose of the proposed action is to revise the State Medical Facilities Plan to provide guidance for assessing the public need for projects subject to review according to the 1992 amendments to the Certificate of Public Need Law.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until November 19, 1992.

Contact: Paul E. Parker, Director, Virginia Department of Health, Division of Resources Development, 1500 East Main Street, Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **Virginia Medical Care Facilities Certificate of Public Need (COPN) Rules and Regulations.** The purpose of the proposed action is to amend the existing certificate of public need regulations to be consistent with the 1992 amendments to the COPN law.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until November 19, 1992.

Contact: Wendy V. Brown, Project Review Manager, Virginia Department of Health, Division of Resources Development, 1500 East Main Street, Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled **VR 355-28-100. Regulations for Disease Reporting and Control.** The purpose of the proposed action is to amend the regulations to make childhood lead poisoning reportable and to change the confidential morbidity report form.

Statutory Authority: §§ 32.1-12 and 32.1-35 through 32.1-38 of the Code of Virginia.

Written comments may be submitted until December 2, 1992.

Contact: Diane Woolard, M.P.H., Senior Epidemiologist, Virginia Department of Health, Office of Epidemiology, 1500 East Main Street, Room 113, P.O. Box 2448, Richmond, VA 23219, telephone (804) 786-6261.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed action is to amend the current rules and regulations of the Virginia Health Services Cost Review Council to reflect changes required by the new methodology.

Statutory Authority: §§ 9-161.1 and 9-164(2) of the Code of Virginia.

Written comments may be submitted until December 15, 1992.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider promulgating regulations entitled: **VR 370-01-002. The Methodology to Measure the Efficiency and Productivity of Health Care Institutions.** The purpose of the proposed action is to promulgate a new methodology to measure the efficiency and productivity of health care institutions as required by § 9-161.1 of the Code of Virginia.

Statutory Authority: §§ 9-161.1 and 9-164(2) of the Code of Virginia.

Written comments may be submitted until December 15, 1992.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

BOARD FOR HEARING AID SPECIALISTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Hearing Aid Specialists intends to consider amending regulations entitled **VR 375-01-02. Board for Hearing Aid Specialists Rules and Regulations.** . The purpose of the proposed action is to solicit public comment on all existing regulations as to the assessment of their effectiveness, clarity and simplicity. Specifically to (i) clarify § 54.1-1505 A of the Code of Virginia as to a "reasonable charge" for services provided by the hearing aid specialists, and (ii) clarify and simplify § 4.10 1 f of the Board's regulations as to the use of the terminology used in this section to avoid confusion among the users of the services being offered.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until December 4, 1992.

Contact: Geralde W. Morgan, Administrator, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8543.

BOARD OF HISTORIC RESOURCES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Historic Resources intends to consider promulgating regulations entitled: **VR 390-01-03.1. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.** The purpose of the proposed action is to (i) set out those criteria to be used by the board in designating Virginia landmarks, (ii) set out the requirements for public notice and public hearings prior to any designation, and (iii) set out the procedures by which property owners may object to and prevent designation.

Section 10.1-2205 of the Code of Virginia, as amended by the 1992 General Assembly, requires the board to promulgate regulations that set out its evaluation criteria and its procedures for the designation of Virginia landmarks. The same Code section requires that the regulations be consistent with the National Historic Preservation Act and its attendant regulations. Section 10.1-2206.1 of the Code sets out requirements for public notice and public hearings prior to any designation by the board, and it requires that any regulations adopted pursuant to § 10.1-2205 be consistent with those requirements. Finally, § 10.1-2206.2 of the Code makes any designations by the board dependent upon the lack of objection from the owner or majority of owners of the property proposed for designation. The applicable state laws, federal laws, and federal regulations may be reviewed at or obtained (at cost) from the Department of Historic Resources.

In order for the board to carry out its statutory mandate to designate Virginia landmarks, it must adopt regulations setting out criteria and procedures. No alternative to regulations is available. In considering all possible criteria and procedures to be set out in those regulations, the board must remain within the constraints set out in the preceding paragraph. These regulations would affect only those designations made by the board; action by the director of the Department of Historic Resources to nominate property to the National Park Service would be governed by a separate, parallel regulation.

The board requests comments on its intended regulatory action, including any ideas that would assist in the drafting and formation of the proposed regulation. The board also requests comments on the costs and benefits of adopting a regulation setting forth evaluation criteria and procedures; such comments may address the concept generically or they may assess the relative merits of specific alternatives.

The board will hold public meeting on December 16, 1992 at 2 p.m. in Senate Room A, General Assembly Building, Richmond, Virginia, to receive comments and respond to questions on this intended action. It is the board's intent to have a permanent regulation in place by September 1, 1993.

Statutory Authority: § 10.1-2205 of the Code of Virginia.

Written comments may be submitted until December 31, 1992, to Margaret T. Peters, Information Officer, 221 Governor Street, Richmond, Virginia.

Contact: H. Bryan Mitchell, Deputy Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

DEPARTMENT OF HISTORIC RESOURCES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the Department of Historic Resources intends to consider promulgating regulations entitled: **VR 392-01-02.1. Evaluation Criteria and Procedures for Nomination of Property to the National Register or for Designation as a National Historic Landmark.** The purpose of the proposed action is to set out those criteria to be used by the director in nominating properties to the National Park Service for inclusion in the National Register or for designation as a National Historic Landmark, and to set out the requirements for public notice and public hearings prior to any nomination.

Section 10.1-2202 of the Code of Virginia, as amended by the 1992 General Assembly, authorizes the director of the department to promulgate regulations that set out evaluation criteria and procedures for nominating property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark. The same Code section requires that the regulations be consistent with the National Historic Preservation Act and its attendant regulations. Section 10.1-2206.1 of the Code sets out requirements for public notice and public hearings prior to any nomination by the director, and it requires that any regulations adopted pursuant to § 10.1-2205 be consistent with those requirements. The applicable state laws, federal laws, and federal regulations may be reviewed at or obtained (at cost) from the Department of Historic Resources.

While the Code authorizes the director to promulgate regulations but does not explicitly require those regulations, the department finds that the 1992 General Assembly's intent in establishing that authorization was that regulations should be promulgated. The department consequently finds that no alternative to regulations is available. In considering all possible criteria and procedures to be set out in those regulations, the director must remain within the constraints set out in the preceding paragraph. These regulations would affect only those nominations made by the director to the National Park Service; action by the Board of Historic Resources to designate Virginia landmarks would be governed by a separate, parallel regulation.

The department requests comments on its intended regulatory action, including any ideas that would assist in the drafting and formation of the proposed regulation. The department also requests comments on the costs and benefits of adopting a regulation setting forth evaluation criteria and procedures; such comments may address the concept generically or they may assess the relative merits of specific alternatives.

The department will hold a public meeting on December 16, 1992, at 2 p.m. in Senate Room A, General Assembly Building, Richmond, Virginia, to receive comments and respond to questions on this intended action. It is the department's intent to have a permanent regulation in place by September 1, 1993.

Statutory Authority: § 10.1-2202 of the Code of Virginia.

Written comments may be submitted until December 31, 1992, to Margaret T. Peters, Information Officer, 221 Governor Street, Richmond, Virginia.

Contact: H. Bryan Mitchell, Deputy Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Apprenticeship Council intends to consider amending regulations entitled: **VR 425-01-26. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.** The purpose of the proposed action is to establish regulations on the numeric ratio of apprentices to journeymen on worksites covered by the Davis-Bacon and related federal prevailing wage laws.

The Department of Labor and Industry requests comments on the following sample language concerning the numeric ratio of apprentices to journeymen.

1. APPRENTICESHIP RATIO. Effective June 1, 1989, the minimum numeric ratio of apprentices to journeymen shall be 1:1 except as noted in (2) of these regulations, below; these provisions are nonserverable. Individual program sponsors shall propose, as part of their apprenticeship standards, a ratio of apprentices to journeymen consistent with proper supervision, training, safety and continuity of employment, applicable provisions in collective bargaining agreements, and applicable requirements of recognized licensing boards or authorities.

APPRENTICESHIP RATIO ON DAVIS-BACON WORKSITES. Effective July 1, 1993, the minimum numeric ratio of apprentices to journeymen for individual program sponsors and for individual contractors signatory to joint and nonjoint apprenticeship programs performing work under the Davis-Bacon and related federal prevailing wage laws shall be worksite-specific and shall be as follows:

one apprentice to the first journeyman;
two apprentices to the first two journeymen;
two apprentices to the first three journeymen;
two apprentices to the first four journeymen; and
one additional apprentice for each two journeymen

thereafter.

The ratio for service trucks on Davis-Bacon worksites shall be one apprentice to one journeyman.

Bids submitted for Davis-Bacon work on or after July 1, 1993, must observe these minimum ratio requirements.

These ratio provisions shall apply until either the Congress of the United States or the U.S. Department of Labor mandate different or uniform ratios for Davis-Bacon work.

3. OTHER REQUIREMENTS RELATED TO DAVIS-BACON WORKSITES: Sponsors must notify the Virginia Apprenticeship Council within 30 days of receipt of a citation alleging violation of the Davis-Bacon Act affecting an apprentice. The notice must be in a form specified by the policies of the Apprenticeship Council. Failure to report citations shall be an omission for which council may consider requiring a remedial action plan or deregistration of the sponsor's program.

The Apprenticeship Council may deregister sponsors who receive final orders of the U.S. Department of Labor or the courts confirming willful or repeated violations of the Davis-Bacon Act affecting registered apprentices.

Statutory Authority: § 40.1-118 of the Code of Virginia.

Written comments may be submitted until November 17, 1992.

Contact: R.S. Baumgardner, Director of Apprenticeship, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2381.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Methods and Standards Used for Establishing Payment Rates - Inpatient Hospital Services, Other Types of Care, and Long-Term Care: Collection of Overpayments.** The purpose of the proposed action is to conform the State Plan for Medical Assistance to the Code of Virginia with regard to the collection of overpayments.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until November 16, 1992, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, DMAS, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-01. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to (i) amend §§ 4.1 B 4 and 4.1 C 4 by deleting "more than"; (ii) delete the untitled statement following § 2.2 3 D 6 as not being applicable; and (iii) establish a fee to take the United States Medical Licensing Examination.

Statutory Authority § 54.1-2900 of the Code of Virginia.

Written comments may be submitted until November 19, 1992, to Hilary H. Connor, M.D., Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005.

Contact: Eugenia A. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled **VR 495-01-1. Board of Nursing Regulations.** . The purpose of the proposed action is to conduct a biennial review of existing regulations as to cost of compliance and propose amendments which may result from the review. Included in the review are requests from (i) the Board of Education to reconsider certification and program approval of Nurse Aide Education Programs in the public schools, and (ii) Tidewater Tech for recognition of the Career College Association as an accrediting agency in § 2.2 A 2 of the regulations.

A public hearing to receive oral comments on the existing regulations will be held on January 27, 1993, at 1:30 p.m. at the Department of Health Professions, Conference Room, 6606 W. Broad Street, Richmond, VA.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code

of Virginia.

Written comments may be submitted until January 27, 1993 at 5 p.m.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909.

BOARD OF PROFESSIONAL COUNSELORS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider amending regulations entitled: **VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.** . The purpose of the proposed action is to adjust renewal and examination fees and to clarify educational and supervision requirements.

Statutory Authority: § 54.1-2400 (6) of the Code of Virginia.

Written comments may be submitted until December 16, 1992.

Contact: Evelyn B. Brown, Executive Director, 6601 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

REAL ESTATE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider amending regulations entitled: **VR 585-01-3. Virginia Real Estate Time-Share Regulations.** The purpose of the proposed action is to review and seek public comment on the registration and disclosure requirements of time-share offered or disposed of in the Commonwealth of Virginia. Other changes to the regulations which may be necessary will be considered.

Statutory Authority § 55-396 of the Code of Virginia.

Written comments may be submitted until November 20, 1992.

Contact: Emily O. Wingfield, Property Registration Administrator, Department of Commerce, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8510.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider amending regulations entitled **VR 615-27-02. Minimum Standards for Licensed Private Child Placing Agencies.** The purpose of the proposed action is to revise certain sections of the standards related to independent living placements, foster and adoptive home studies, and related foster care standards. These are the standards private agencies must meet in order to obtain a license to place children in foster or adoptive homes.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until December 16, 1992, to Doris Jenkins, Division of Licensing Programs, 8007 Discovery Drive, Richmond, VA 23229.

Contact: Peggy Friedenberg, Policy Analyst, Bureau of Governmental Affairs, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider promulgating regulations entitled: **VR 615-43-4.1. Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record.** The purpose of the proposed action is implement the changes in § 63.1-236 of the Code of Virginia, effective July 1, 1992, which allow adults adopted in Virginia to apply to the Commissioner of Social Services for identifying information on their birth families.

Emergency regulations were published in The Virginia Register on August 24, 1992.

Statutory Authority: §§ 63.1-25, 63.1-223, 63.11-226, 63.1-228, 63.1-229, 63.1-236 and 63.1-236.1.

Written comments may be submitted until January 4, 1992, to Sandra A. Sanroma, Foster Care and Adoption Unit, 8007 Discovery Drive, Richmond, Virginia, 23229-8699.

Contact: Margaret J. Friedenberg, Legislative Analyst, Governmental Affairs, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-21-00. Water Quality Standards.** The purpose of the proposed action is to conduct the triennial review of water quality standards as required by federal and state law. As part of this triennial review, public meetings are

being held to receive comments and suggestions which the State Water Control Board will consider in proposing specific changes in the standards that will be formally considered at public hearings during 1993.

The type of information which would help the board conduct this review includes information on the following Environmental Protection Agency requirements:

– information to update existing standards or to add new standards (especially for toxic pollutants),

– suggestions for a narrative biological criteria,

– evaluations of the 1986 Environmental Protection Agency's bacteria and dissolved oxygen criteria, and

– provisions to ensure that standards apply to wetlands and appropriate numeric criteria for wetlands.

In addition, staff will be considering nominations previously received for water bodies to be included as exceptional waters under VR 680-21-01.3 C as well as seeking additional recommendations for this category. The nominations received thus far include the Rappahannock River from the headwaters to its confluence with Carter's Run, the Rappahannock River from the head of Kelly's Ford rapids to its confluence with Mott's Run and the Maury River from Goshen to Rockbridge Baths.

Finally, any other information which may indicate that modifications are necessary in other sections of the regulation will also be considered.

Any amendments to the water quality standards proposed as a result of this triennial review have the potential to impact every VPDES permit holder in the Commonwealth of Virginia. The impact on an individual VPDES permit hold would range from additional monitoring costs through upgrades to existing wastewater treatment facilities.

The board will hold six public meetings to receive views and comments and to answer questions of the public. (See Calendar of Events Section).

Applicable laws and regulations include § 303(c)(2)(B) and § 307(a) of the Clean Water Act, State Water Control Law, VR 680-21-00 (Water Quality Standards Regulation) and VR 680-14-01 (Permit Regulation).

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Written comments may be submitted until November 16, 1992.

Contact: Elleanore Daub, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, VA 23230-1143, telephone (804) 527-5091.

For information concerning Proposed Regulations, see information page.

Symbol Key
Roman type indicates existing text of regulations. *Italic type* indicates proposed new text. Language which has been stricken indicates proposed text for deletion.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: **VR 230-01-003. Rules and Regulations Governing the Certification Process. REPEALED.**

Title of Regulation: **VR 230-01-003:1. Rules and Regulations Governing the Certification Process.**

Statutory Authority: §§ 53.1-5, 53.1-68, 53.1-141, 53.1-178 and 53.1-182 of the Code of Virginia.

Public Hearing Date: February 10, 1993 - 10 a.m.
Written comments may be submitted through January 30, 1993.
(See Calendar of Events section for additional information)

Summary:

The Rules and Regulations Governing the Certification Process are designed to establish a uniform process to be followed in the (i) evaluation of a program or facility being considered for certification to operate by the Board of Corrections; (ii) evaluation of a request for an appeal from a certification decision of the board; and (iii) evaluation of a request for a waiver of a standard established by the board.

A program or facility must be certified by the Board of Corrections to prevent the risk of loss of state funding or possible closure. These regulations are to guide the administrative process.

Included, among others are regulations addressing the audit process and procedures, variance requests, appeals process and schedule, notification requirements, and options available in the event of decertification.

VR 230-01-003:1. Rules and Regulations Governing the Certification Process.

PART I.
INTRODUCTION.

§ 1.1. Definitions.

The following words and terms when used in these regulations shall have the following meaning, unless the context clearly indicates otherwise:

"Affiliated agencies" means agencies not under the administrative control of the board or department but subject to board standards.

"Appeal" means the action taken by a facility or program after an audit when there is disagreement with a finding of noncompliance.

"Board" means the State Board of Corrections.

"Certification inspector" means a person assigned to the Certification Unit who serves as chairperson or team leader of the certification team.

"Certification team" means those persons designated by the department to conduct compliance audits.

"Certification unit" means the organizational unit of the department responsible for scheduling and conducting compliance audits to board standards.

"Compliance" means that no deficiency was cited by the certification team or that cited deficiencies have been corrected through completion of the tasks identified in the plan of action.

"Compliance audit" or "audit" means an on-site official review of a facility or program by the certification team to evaluate compliance with standards promulgated by the board.

"Compliance documentation" means specific documents or information including records, reports, observations and verbal responses required to verify compliance with standards by a facility or program.

"Conditional certification" means a temporary certification status granted by the board for a specific period of time to correct deficiencies beyond the control of the facility or program.

"Decertified" means the board has determined that a facility or program has not met a minimum acceptable level of compliance with standards to be granted a certification.

"Deficiency" means that the supporting evidence or performance is insufficient for the facility or program to meet the requirements of specific board standards.

"Department" means the Department of Corrections.

"Deputy director" means the administrative head of a specific division within the department or his designee.

"Director" means the Director of the Department of

Corrections.

"Facility" means the physical plant of a state or local correctional or residential program.

"Facility or program administrator" means the individual responsible for the operation of a facility or program subject to standards, rules or regulations of the board.

"Life, health, safety standards" or "LHS standards" means those standards directly related to life, health or safety issues as identified by the board.

"Plan of action" means a document stating what has been or will be done to bring all deficiencies into compliance with standards, including a description of the activities undertaken, staff responsibilities, and a time table for completion.

"Probationary certification" means a temporary certification status granted by the board for a specific period of time to correct deficiencies within the control of the facility or program.

"Program" means the plan or system of services provided by a public or private correctional facility.

"Regional administrator" means the administrative head of a specific region within the department.

"Regional office" means the administrative offices of a specific region within the department.

"Unconditional certification" means that a facility or program is in 100% compliance with life, health, safety, or supervision standards, as appropriate, and has complied with a minimum of 90% of the remaining standards.

"Variance" means a decision by the board to temporarily suspend the requirements of a specific standard for a specific period of time.

§ 1.2. Legal basis.

Sections 53.1-5, 53.1-68, 53.1-141, 53.1-178, and 53.1-182 of the Code of Virginia require the board to develop and establish program and fiscal standards for state, local and community correctional facilities, lockups and community correctional services and to monitor the activities of the department in implementing the standards.

§ 1.3. Supersession.

VR 230-01-003, Rules and Regulations Governing the Certification Process adopted by the board on December 13, 1989, are rescinded on the effective date of these standards.

§ 1.4. Effective date.

These regulations shall become effective on February 1, 1993.

PART II.
GENERAL PROVISIONS.

§ 2.1. Frequency of audits.

A. All state, local and community correctional facilities and programs operated by or affiliated with the department shall be audited every three years.

1. A new facility or program shall undergo a compliance audit within 12 months of opening.

a. The regional office shall notify the certification unit in writing within 30 days after a new facility or program begins operation. Operation shall begin upon acceptance of the first client.

b. The regional office shall conduct a preparatory audit of a new facility or program during the first six months of operation. A preparatory audit is a review of the operation against the appropriate standards.

c. The certification unit shall conduct a compliance audit during the second six months of operation and on a regular schedule thereafter.

B. The scheduled compliance audit may be postponed for up to six months due to circumstances beyond the control of the facility or program, such as natural or man-made disasters.

§ 2.2. Preparation for audit.

A. The certification unit staff shall develop a three-year audit schedule.

1. The schedule shall be submitted to the appropriate deputy director for review, comment and approval.

2. Upon approval, the certification unit staff shall:

a. Disseminate the final schedule to the regional offices.

b. Review the schedule as necessary and make adjustments for additional audits.

3. Changes to the final audit schedule shall be agreed upon by the appropriate deputy director and the certification unit manager. The certification unit staff shall notify the facility or program of the change. Changes shall not extend the audit date beyond the established frequency limits without board approval.

B. The deputy director shall appoint certification team members.

1. Team members shall have prior audit experience or

have completed certification training.

2. At least one person shall be a staff member of the same type of facility or program being audited.

3. At least one member shall be from outside of the region.

4. The team leader shall coordinate and facilitate the audit.

5. The jail and lockup team shall consist of a certification inspector and a regional manager for state and local community facilities and programs.

C. The certification unit staff shall notify the facility or program administrator in writing at least 60 days prior to an audit. A copy of this regulation, a copy of the standards compliance form, and a list of the compliance documentation required during an audit shall be enclosed.

D. A certification inspector shall visit the facility or program administrator prior to an audit to discuss the audit process. Exceptions shall be documented and approved by the certification unit manager and shall be based upon the program's need for information and assistance.

§ 2.3. On-site audit procedures.

The certification inspector shall use the first day of the audit to orient the team to the audit process and afford the facility or program administrator an opportunity to brief the team on aspects of the facility or program which may have a bearing on the audit.

1. The facility or program administrator shall grant the team access to all documents, staff and areas of the facility or program which are relevant to establishing compliance.

2. Data will be collected through documentation, interview and observation.

3. The team leader shall brief the facility or program administrator daily on audit progress and preliminary findings.

4. The entire certification team shall make compliance decisions.

a. When a team member finds an indication of noncompliance, the entire team shall be notified and provided all available information regarding the standard in question.

b. The team shall review the information available to determine if the deficiency is minor in nature.

(1) A majority vote of the team shall determine the compliance.

(2) If a majority vote cannot be obtained, the matter shall be referred to the appropriate deputy director.

5. A meeting shall be held with the facility or program administrator to discuss the team's findings. At this time the facility or program administrator may introduce additional data having a bearing on the team's findings.

6. At the request of the facility or program administrator, the team leader shall report audit findings to facility or program staff.

§ 2.4. Audit findings.

The certification unit staff shall mail the audit findings to the facility or program administrator and the regional office within 10 working days following the compliance audit.

§ 2.5. Development of action plans.

An action plan shall be developed for all deficiencies noted in the findings. The regional office staff shall be available to assist the facility or program administrator in developing a plan of action to correct the deficiencies noted.

1. The plan of action must identify the following:

a. The tasks required to correct a noted deficiency;

b. The personnel responsible for completing the tasks; and

c. The actual or proposed date of task completion.

2. The facility or program administrator shall submit the plan of action to the regional office within 20 working days of receipt of the notification of deficiencies.

3. The regional administrator shall review the plan of action. If approved, it shall be submitted to the deputy director within five working days.

4. If the regional administrator does not approve the plan, a report indicating the review and reasons with a copy of the plan of action shall be submitted to the deputy director within five working days.

5. The deputy director shall either approve, amend or return the plan of action to the regional administrator for revision within 10 working days of receipt.

6. The regional administrator shall complete any revisions requested and return the plan to the deputy director within 10 working days.

7. The deputy director may grant one 30-day extension

to a facility or program administrator for the development of a plan of action. The board shall be notified of the extension and its justification. The board may grant additional extensions.

8. If a facility or program administrator fails to submit a plan of action within the time specified, the department shall submit the report with recommendations to the board.

§ 2.6. Variance requests.

A variance may be requested by a facility or program administrator when unable to comply with a standard.

1. Variance requests shall be submitted with the plan of action.

2. The regional administrator shall make a recommendation on the variance request and submit it and the plan of action to the deputy director.

3. The deputy director shall review the variance request and plan of action and either submit them to the board or return them to the regional administrator for revision.

4. If a variance request is disapproved, the deputy director shall notify the board.

5. Variance requests shall include:

a. Standard which cannot be met;

b. Justification for variance;

c. Actions being taken to comply;

d. Estimated date of compliance; and

e. Individual responsible for the action.

6. A facility or program with an approved variance shall provide a copy to the certification team.

§ 2.7. Appeal process and schedule.

A facility or program administrator may appeal a team decision using the following appeal levels and guidelines.

1. The appeal review levels for facilities and programs that are state operated are:

a. Deputy director and chief deputy director

b. Director

2. The appeal review levels for facilities and programs that are locally operated are:

a. Deputy director and chief deputy director

b. Director

c. Board of Corrections

3. Appeals shall be submitted to the regional office along with the plan of action within 20 working days of receipt of the notification of deficiencies.

4. The regional administrator shall submit the appeal and the plan of action to the deputy director within five working days. Upon receipt of notification from the deputy director, the certification unit manager shall coordinate a review of the appeal issues with the persons identified in §§ 2.7 A and 2.7 B of these regulations.

5. With the exception of the Board of Corrections, each appeal level shall complete their review of the appeal and notify the certification unit manager of their decision within five working days. The Board of Corrections shall complete its review and notify the certification unit manager of its decision within 20 working days.

6. The certification unit manager shall notify the facility or program administrator of the decision within three working days.

7. If the appeal is denied, the facility or program administrator shall:

a. Submit a plan of action to the regional administrator, or

b. Request that the appeal be forwarded to the next level.

8. If the appeal is denied by the Board of Corrections, the facility or program administrator shall submit a plan of action.

§ 2.8. Board action on audit results.

A. The certification unit manager shall submit audit reports to the board no later than 90 days after completion of the audit. Audit reports shall include:

1. A list of deficiencies;

2. Plans of corrective action and completion status;

3. Similar deficiencies from the previous audit; and

4. Recommended action for consideration by the board.

B. Based upon the audit report the board shall take one of the following actions and issue the appropriate certificate:

1. A Certificate of Unconditional Certification shall be

issued to a facility or program that has:

a. Complied 100% with life, health, safety standards; or

b. Complied 100% with supervision standards, when life, health, safety standards do not apply; and

c. Complied with at least 90% of the remaining standards.

2. A Certificate of Probationary Certification indicates deficiencies within the control of the facility or program. It shall be issued to a facility or program that has:

a. Complied with less than 100% of the life, health, safety standards; or

b. Complied with less than 100% of the supervision standards, when life, health, safety standards do not apply; and

c. Complied with less than 90% of the remaining standards.

A probationary certification shall be valid for not more than one year as approved by the board. The department shall provide periodic status reports to the board.

3. A Certificate of Conditional Certification indicates deficiencies beyond the control of the facility or program as determined by the board, for example, lack of legislative action or capital funding. It shall be issued to a facility or program that has:

a. Complied with less than 100% of the life, health, safety standards; or

b. Complied with less than 100% of the supervision standards, when life, health, safety standards do not apply; and

c. Complied with less than 90% of the remaining standards.

A conditional certification shall be valid for not more than one year as approved by the board. The board may grant one extension not to exceed one year. The department shall provide periodic status reports to the board.

4. A Letter of Decertification may be issued by the board when a facility or program with a conditional or probationary certification does not meet the requirements for certification within the time limits approved by the board. The department shall provide periodic status reports to the board during this period.

a. A decertified facility or program may request to be reaudited at any time.

b. The appropriate deputy director shall notify the certification unit manager to schedule a new audit.

5. A copy of the Probationary, Conditional or Decertification Letter for local and community facilities and programs shall be sent to the head of the local governing body and the chief circuit court judge.

6. A facility or program's certification status shall remain in effect until notified of a specific change by the board.

§ 2.9. Notifications.

The certification unit shall notify department, state, and local authorities of a facility or program's certification status within four weeks after the board's action. Facilities or programs shall post the certificate in a place conspicuous to the public.

§ 2.10. Actions that can be taken when decertified.

A facility or program failing to achieve certification may have the following actions taken, in compliance with statutes, policies, and procedures established by the board, the department or other state or federal agencies.

1. Action on facilities or programs that are state operated may include, but not be limited, to the following:

a. The facility or program director authorized to take action may bring about a reorganization of the facility or program structure or other personnel actions deemed necessary to bring it into compliance with standards; or

b. The facility or program may be closed in accordance with established procedures.

2. Actions on facilities and programs that are locally operated may include, but not be limited to, the following:

a. Recommend that the facility or program administrator authorized to take action bring about a reorganization of the facility or program structure or other personnel actions deemed necessary to bring it into compliance with standards; or

b. Recommend that the facility or program be closed or the termination of contractual agreements in accordance with established procedures; or

c. Initiate proceedings for the withholding of funds under the appropriate sections of the Code of Virginia.

* * * * * * * *

Title of Regulation: **VR 230-30-004. Standards for Community Residential Programs. REPEALED.**

Title of Regulations: **VR 230-30-004:1. Standards for Community Residential Programs.**

Statutory Authority: §§ 53.1-5 and 53.1-178 of the Code of Virginia.

Public Hearing Date: February 10, 1993
Written comments may be submitted through January 30, 1993.
(See Calendar of Events section for additional information)

Summary:

The Standards for Community Residential Programs establish the evaluation criteria for the administration, supervision and certification of community residential programs operated by, or contracted with, the Department of Corrections throughout the state. This revision updates the standards with current program practices. Current VR 230-30-004 will be repealed.

A facility must be certified by the Board of Corrections to prevent the risk of loss of state funding or possible closure. These minimum standards pertaining to the administration, along with standards relating to the health, welfare and safety of residents in such programs which are affiliated with or operated by the Department of Corrections, must be met.

VR 230-30-004:1. Standards for Community Residential Programs.

PART I.
INTRODUCTION.

§ 1.1. Definitions.

The following words and terms when used in these standards shall have the following meaning unless the context clearly indicates otherwise:

"Agency" means the public or private organization that has direct responsibility for the operation of a residential program including the implementation of policy established by the governing authority.

"Community residential program" means a nonsecure facility located in the community which provides an alternative to incarceration for those offenders who have been adjudicated by the courts or parole board.

"Contraband" means items prohibited on facility premises by statute, regulation, or policy.

"Facility" means the physical plant.

"Foot candle" means a unit for measuring the intensity of illumination defined as the amount of light thrown on a surface one foot away from the light source.

"Furlough" means a written approval which allows a resident to leave the facility and go into the community for a period of time, including overnight.

"Pass" means a written approval which allows a resident to leave the facility and go into the community for a period of time, other than overnight.

"Program" means the plan or system of residential services of a public or private agency.

"Resident" means an individual participating in a community residential program under the purview of a contractual agreement.

"Staff" means any agency administrator, facility director, counselor, case manager, clerical worker or supervisor or others who are employed by, contracts with, or volunteers services to the program.

§ 1.2. Legal base.

Sections 53.1-5 and 53.1-178 of the Code of Virginia are the legal base for these standards since they direct the State Board of Corrections to prescribe standards for the development, operation and evaluation of programs and services.

§ 1.3. Supersession.

VR 230-30-004, Adult Community Residential Services Standards adopted by the Board of Corrections in December 1981 are rescinded ¢1m ¢0mon the effective date of these standards.

§ 1.4. Responsibility.

The primary responsibility for the application of these standards shall be with the public or private contracted agency.

PART II.
ADMINISTRATION AND MANAGEMENT.

Article 1.
Administration.

§ 2.1. The agency shall appoint a governing authority which serves as a link between the residential program and community.

§ 2.2. The governing authority of the public or private community residential program holds meetings at least quarterly with the community residential center administrator in order to facilitate communication,

establish policy, explore problems, ensure conformity to legal and fiscal requirements, and implement community residential programs.

§ 2.3. The agency and its programs shall be managed by a single administrative officer who reports directly to the governing authority.

§ 2.4. The program has an operations manual which summarizes approved methods of implementing agency policies and provides details for daily operations of the program.

§ 2.5. The operations manual is reviewed at least every two years by the govern ing authority or agency administrator and updated when necessary.

§ 2.6. The agency monitors the implementation of policies and procedures set forth in the operations manual through an annual review by the administrator or designated staff.

§ 2.7. Written policy guards against conflict of interest which adversely affect the agency. This policy specifically states that no person connected with the agency will use his official position to secure privileges or advantages for himself.

§ 2.8. Any community corrections program operated exclusively by the department shall have a written policy which ensures that it conforms to governmental statutes and regulations relating to campaigning, lobbying and political practices.

§ 2.9. The agency has a current organizational chart which accurately reflects the structure of authority, responsibility and accountability within the agency.

§ 2.10. The agency can document its relationship to all funding and regulatory agencies.

§ 2.11. The agency has identified, documented and publicized its tax status with the Internal Revenue Service.

§ 2.12. The agency has by-laws, approved by the governing authority, which are filed with the appropriate local, state or federal body.

§ 2.13. At a minimum, the agency by-laws for the governing authority include:

1. Membership;

2. Size of the governing authority;

3. Method of selection;

4. Terms of office;

5. Duties and responsibilities of officers;

6. Times authority will meet;

7. Committees;

8. Quorums;

9. Parliamentary procedures;

10. Recording of minutes;

11. Method of amending by-laws;

12. Conflict of interest provisions; and

13. Specification of the relationship of the agency administrator to the governing authority.

§ 2.14. A permanent record is kept of all meetings of the governing authority.

Article 2.
Fiscal Management.

§ 2.15. The agency administrator prepares an annual written budget of anticipated revenues and expenditures which is approved by the appropriate governing authority.

§ 2.16. The agency has a budget which links program functions and activities to the cost necessary for their support.

§ 2.17. The agency administrator participates in budget reviews conducted by the governing authority.

§ 2.18. Written policies and procedures govern revisions in the budget.

§ 2.19. Written fiscal procedures provide for accounting for all income and expenditures on an ongoing basis.

§ 2.20. There is an annual independent financial audit of the agency performed by a certified public accounting firm or a governmental auditing agency.

§ 2.21. The agency prepares and distributes to its governing authority, and upon request to the Department of Corrections, the following documents:

1. Annual budget;

2. Income and expenditure statements;

3. Funding source financial reports; and

4. Independent audit report.

§ 2.22. Written fiscal policies and procedures, which are adopted by the governing authority, include at a minimum:

1. Internal controls;

2. Petty cash;

3. Bonding;

4. Signature control on checks;

5. Resident funds; and

6. Employee expense reimbursement.

§ 2.23. The agency can document insurance coverage for itself which includes coverage for:

1. Physical plant;

2. Equipment;

3. Personal and property injury to employees, residents and third parties; and

4. Professional malpractice.

§ 2.24. Written policy and procedure ensures a current inventory of all property.

§ 2.25. Written procedure governs the purchasing and requisitioning of supplies, equipment and vendor selection.

§ 2.26. There are written procedure for documenting and authorizing compensation to consultants.

Article 3.
Personnel.

§ 2.27. Written personnel policies and procedures, which are approved by the governing authority, include at a minimum:

1. Recruitment;

2. Employment practices and procedures including in-service training and staff development;

3. Promotion;

4. Grievance and appeal;

5. Personnel records and contents;

6. Benefits;

7. Holidays;

8. Leave;

9. Hours of work;

10. Salaries;

11. Disciplinary action procedures; and

12. Termination and resignation.

§ 2.28. The agency makes available to all employees a copy of all personnel policies and procedures. Each employee confirms in writing the availability and review of current policies and procedures.

§ 2.29. The agency maintains written job descriptions and job qualifications for all positions in the agency.

§ 2.30. Written policy and procedure govern the confidentiality of personnel records and protection against unauthorized examination.

§ 2.31. A written procedure exists whereby the employee can challenge information in his personnel file and have it corrected or removed if proven inaccurate.

§ 2.32. Written policies and procedures require an annual performance evaluation of all employees. This evaluation is in writing and is based upon defined criteria. Each performance evaluation is reviewed and discussed with the employee.

§ 2.33. The agency provides initial orientation, to include a review of all policies and procedures, for all new employees beginning the first day of employment and concluding within 30 days. The employee signs and dates a statement that orientation has been received.

§ 2.34. An employee shall not assume sole responsibility for any working shift prior to the completion of orientation.

§ 2.35. The agency does not discriminate or exclude from employment women working in men's programs or men working in women's programs.

§ 2.36. The agency complies with all governmental regulatory requirements related to employment and personnel practices.

§ 2.37. Written policy outlines experience and education equivalents necessary for employment.

§ 2.38. Criminal records checks shall be performed on all employees prior to hiring.

PART III.
FACILITY.

§ 3.1. The facility conforms to all applicable zoning ordinances or, through legal means, is attempting to comply with or change such laws, codes, or zoning ordinances.

§ 3.2. The facility conforms to all applicable state and local building codes.

§ 3.3. The facility complies with the sanitation and health codes of the local or state jurisdiction.

§ 3.4. The facility complies with the regulations of the

state or local fire safety authority which has primary jurisdiction over the agency.

§ 3.5. Smoke detectors are installed, operational and inspected as recommended by the fire marshal or fire department representative.

§ 3.6. Automatic, permanent emergency lights are installed, operational, and are inspected as recommended by the fire marshal or fire department representative,

§ 3.7. There is a housekeeping and maintenance plan which ensures the facility is clean and in good repair.

§ 3.8. The facility is located within 10 city blocks of public transportation or other means of transportation are available.

§ 3.9. All sleeping quarters and bathroom areas have a minimum of 20 footcandles of light.

§ 3.10. All sleeping quarters shall be properly ventilated.

§ 3.11. A minimum of 60 square feet of floor space per resident is provided in the sleeping area of the facility.

§ 3.12. The sleeping area provides some degree of privacy.

§ 3.13. Male and female residents shall not occupy the same sleeping quarters.

§ 3.14. Each resident is provided, at a minimum, the following:

1. Bed;

2. Mattress and pillow;

3. Supply of bed linens;

4. Chair; and

5. Closet or locker space.

§ 3.15. Within reasonable limits the agency permits residents to decorate their sleeping quarters with personal possessions, pictures and posters.

§ 3.16. Private counseling space is provided in the facility.

§ 3.17. Space to accommodate group meetings of the residents is provided in the facility.

§ 3.18. A visiting area is provided in the facility.

§ 3.19. The facility has a minimum of one toilet for every 10 residents.

§ 3.20. The facility has a minimum of one wash basin for every six residents.

§ 3.21. The facility has a minimum of one shower or bathing facility for every 10 residents.

§ 3.22. The facility has one washer and one dryer for every 16 residents, or equivalent laundry service is available in the immediate vicinity of the facility.

§ 3.23. Written procedures govern transportation of clients which ensure at a minimum:

1. Those staff providing transportation shall have valid operator's license;

2. Reporting of accidents; and

3. The vehicle's operation is in accordance with all state and local laws or ordinances.

PART IV.
PROGRAM SERVICES.

Article 1.
Intake.

§ 4.1. Written policies and procedures govern intake and criteria for acceptance into the program.

§ 4.2. The agency completes an initial intake information form on each client admitted into residency, which, unless prohibited by statute, includes, at a minimum:

1. Name;

2. Address;

3. Date of birth;

4. Social Security Number;

5. Current photograph;

6. Sex;

7. Race or ethnic origin;

8. Reason for referral;

8. Whom to notify in case of emergency;

10. Date information gathered;

11. Signature of both interviewee and employee gathering information;

12. Name of referring agency or committing authority;

13. Special medical problems or needs;

14. Personal physician, if applicable; and

15. Legal status, including jurisdiction, length and

conditions of sentence.

§ 4.3. The agency distributes a copy of intake policies to all referral agencies and interested parties.

§ 4.4. The agency advises the referral agency when a prospective resident is not accepted into the program, stating specific reasons.

§ 4.5. The agency provides, upon request of the prospective resident, the reasons for nonacceptance into the program.

§ 4.6. At the time of intake, agency staff discuss goals, services available, program rules, and possible disciplinary actions with the resident. This is documented by employee and resident signatures.

Article 2.
Program.

§ 4.7. The program provides, or makes referrals when needed, for the following services:

1. Supervision in the community;

2. Shelter;

3. Food service (where applicable);

4. Financial assistance;

5. Individual counseling;

6. Assistance with transportation;

7. Medical health services;

8. Mental health services;

9. Vocational evaluation, counseling and training;

10. Employment counseling and placement;

11. Education or training counseling and placement; and

12. Group counseling.

§ 4.8. Written procedure governs the assignment of case management of each resident to a staff member.

§ 4.9. The community residential program documents its efforts to encourage and foster the development and use of community resources to help offenders.

§ 4.10. The agency maintains an inventory of functioning community agencies. The effectiveness of the services provided to the program by the agencies is evaluated annually.

§ 4.11. Staff use community resources, either through referrals for service or by contractual agreement, to provide residents with the services to become self-sufficient.

§ 4.12. Written procedure governs the handling and use of residents' money. This procedure shall be in compliance with current Department of Corrections operating procedures.

§ 4.13. Where a language or literacy problem exists which can lead to resident misunderstanding of agency rules and regulations, assistance is provided to the resident either by staff or by another qualified individual under the supervision of a staff member.

§ 4.14. The program documents that each resident has received, read and understands program rules and regulations. Documentation shall include resident and staff signature and date.

§ 4.15. Written procedure controls movement in and out of the facility. The procedure shall include, at a minimum, a sign in and out system which includes:

1. Destination and phone number;

2. Reason for signing out;

3. Time and date out;

4. Expected time of return;

5. Resident's signature at time of departure;

6. Staff signature or initials at time of departure;

7. Date of return;

8. Time of return;

9. Resident's signature at time of return; and

10. Staff signature or initials at time of return..

§ 4.16. The program shall conform to existing department operating procedures for passes and furloughs.

§ 4.17. At a minimum, written procedures provide for:

1. An account of the residents' whereabouts in the facility at all times;

2. A population count, by resident name, conducted by staff every two hours;

3. Visual contact with each resident in the facility during the count; and

4. Count results documented and initialed by staff.

§ 4.18. All program rules and regulations pertaining to residents are conspicuously posted in the facility.

§ 4.19. Written procedures govern verification of residents whereabouts when not in the facility. The forms of verification shall include but not be limited to:

1. Random telephone contacts to the authorized destination;

2. Documentation from authorized destination which includes:

a. Signature of individual visited;

b. Date and time of visit; and

3. Random on-sight visits to authorized destination.

§ 4.20. Program staff design a personalized program with and for each resident which includes:

1. Measurable criteria of expected behavior and accomplishments;

2. Time schedule for achievement; and

3. Staff and resident signatures.

§ 4.21. Program staff review changes in the personalized program with the resident, and document this procedure with staff and resident signatures.

§ 4.22. Resident progress is reviewed by program staff at least every two weeks with the resident. The outcome of each review is documented in the client's case file.

§ 4.23. The staffing pattern of the facility concentrates staff when most residents are available to use facility resources.

§ 4.24. There is at least one staff person who is awake, available and responsive to residents' needs on facility premises 24 hours a day.

§ 4.25. Written procedures, including an appeal procedure, exist for resident grievances.

§ 4.26. Written policies and procedures provide for increasing opportunities and privileges for resident involvement with family and in community activities prior to final release.

§ 4.27. Written policy and procedure shall ensure that attendance and participation in religious services and activities is strictly voluntary. Residents shall be permitted to attend religious services of their choice in the community and to receive visits from representatives of their respective faiths.

§ 4.28. Written policy and procedure ensure that residents may receive approved visitors during established visiting hours, except where there is substantial evidence that a visitor poses a threat to the safety of the resident or the security of the facility.

§ 4.29. Written policy and procedure ensure that resident mail, both incoming and outgoing, is not read or withheld and that inspection of resident mail for money or contraband shall occur in the presence of the resident.

§ 4.30. The program provides for a variety of recreational and leisure time activities.

Article 3.
Records.

§ 4.31. The program maintains a record for each client in which all significant decisions and events are recorded. The records shall include, at a minimum, but are not limited to the following information:

1. Initial intake information form;

2. Case information form referral source;

3. Case and social history;

4. Emergency contact information;

5. Medical record, when available;

6. Individual plan or program, individual group and family counseling shall be documented;

7. Signed release of information forms;

8. Evaluation and progress reports;

9. Current employment data;

10. Program rules and disciplinary policy, signed by participant;

11. Documented legal authority to accept participation;

12. Grievance and disciplinary record;

13. Subsequent referrals to other agencies by the program; and

14. Termination summary.

§ 4.32. Staff members make entries into the case records and date and initial each entry.

§ 4.33. All case records shall be maintained in a secure location to minimize the possibility of theft, loss, destruction or unauthorized use.

§ 4.34. Written procedure provides for a monthly case record review to ensure that the case is current and

accurate.

§ 4.35. Written procedure governs client access, agency personnel access, outside agency access, and designates personnel responsible for the release of client information. The confidentiality of case records is maintained in accordance with federal and state laws.

§ 4.36. All case records are marked "confidential" and kept in locked file cabinets which are also marked "confidential."

§ 4.37. Written policy and procedure govern the retention and distribution of case records in accordance with state law.

§ 4.38. The program provides a "Release of Information Consent Form" which at a minimum complies with applicable federal and state laws, and includes:

1. Name of person, agency or organization requesting information;

2. Name of person, agency or organization releasing information;

3. The specific information to be disclosed;

4. The purpose or need for the information;

5. Expiration date;

6. Date consent form is signed;

7. Signature of the resident; and

8. Signature of individual witnessing resident's signature.

Article 4.
Citizen and Volunteer Involvement.

§ 4.39. Written policies and procedures govern citizen involvement in the programs.

§ 4.40. Written policies and procedures for citizen involvement include a system for recruitment, selection, training, orientation, responsibilities, evaluation, termination and supervision of volunteers.

§ 4.41. There is documentation that volunteers complete an orientation and training program before they participate in their assignments.

Article 5.
Communication and Coordination.

§ 4.42. The residential program documents its efforts in conducting a continuing program of public information and education.

§ 4.43. The program documents working relationships with other components of the criminal justice system.

PART V.
SUPPORT SERVICES.

Article 1.
Food Service.

§ 5.1. The program provides or contracts for food service, and ensures that the service meets or exceeds nutritional standards as recommended by the Department of Corrections.

§ 5.2. When the program provides or contracts for food service, the service shall have an annual health and sanitation inspection by state or local authorities. Any health and sanitation deficiencies shall have a documented plan of corrective action which has been approved by the appropriate state or local inspector.

§ 5.3. When the program provides food service, food service staff shall develop at least one week of advanced planned menus and substantially follow the schedule.

§ 5.4. When the program provides food service, the dining area is ventilated, properly furnished and suitably decorated.

§ 5.5. When the program provides food service, all food service personnel shall:

1. Have clean hands and fingernails;

2. Wear hair nets or caps;

3. Wear clean washable garments; and

4. Practice hygienic food handling techniques.

§ 5.6. When the program provides food service, all food service personnel shall have an annual physical to ensure they are in good health and free from communicable disease.

§ 5.7. When the program provides for food service, all foods are properly stored at the completion of each meal.

§ 5.8. The program provides special diets as required to meet the documented medical and religious needs of residents.

Article 2.
Medical Care and Health Services.

§ 5.9. The program has first aid equipment approved by a recognized health authority available at all times for medical emergencies.

§ 5.10. Written procedure ensures perpetual availability of first aid equipment and supplies.

§ 5.11. The program maintains a current inventory control list of first aid equipment and supplies.

§ 5.12. One staff member on each shift of the residential program is trained in emergency first aid procedures, including cardiopulmonary resuscitation.

§ 5.13. Routine medical services and 24-hour medical services are available to residents.

§ 5.14. The program has written emergency medical back-up plans which are communicated to all employees and residents.

§ 5.15. The program documents working relationships with community health care agencies in order to assist residents in meeting their health care needs.

§ 5.16. Written policy and procedure provide for medical examination of any employee or resident suspected of having a communicable disease.

§ 5.17. Written policy and procedure address the management of serious and infectious diseases for residents and staff.

§ 5.18. At the time of the resident's admission, a medical assessment is completed to determine if the resident has any special medical needs. Program staff are aware of residents' special medical problems.

§ 5.19. When a urine surveillance program is in effect, written policy and procedure govern collection of samples and interpretation of results.

§ 5.20. Written policy and procedure govern the possession and control of prescribed medications and over-the-counter drugs.

PART VI.
SPECIAL PROCEDURES.

§ 6.1. Written emergency procedures cover the following:

1. Fire;

2. Evacuation;

3. Bomb or bomb threat;

4. Hostage;

5. Disturbances, which at a minimum include riots, assaults, and fights;

6. Deaths;

7. Power failure;

8. Loss of heat;

9. Loss of water;

10. Escape or absconding; and

11. Employee work stoppage.

§ 6.2. The program has copies of the fire emergency plans posted conspicuously in the facility.

§ 6.3. The facility staff conducts and documents monthly emergency fire drills, to include evacuation of residents.

§ 6.4. Written policy ensures that no resident or group of residents is in a position of control or authority over other residents.

§ 6.5. Written policy restricts the use of physical force to instances of justifiable self-protection, protection of others, and only to the minimum degree necessary to control the situation.

§ 6.6. The program maintains and makes available written policies and procedures for conducting searches of residents, staff and visitors as well as the facility, in order to control contraband.

§ 6.7. Written policy and procedure govern the disposal of contraband found during searches.

§ 6.8. Written procedures for reporting absconders comply with department operating procedures.

§ 6.9. Written policy prohibits the carrying and use of weapons in the facility by both staff and residents.

§ 6.10. The facility maintains a log of occurrences and important events which shall:

1. Be kept in a bound book for permanent residence;

2. Be written legibly in ink;

3. At each entry, contain full names, at least once, of the residents involved in the events;

4. Unless otherwise documented, contain a behavioral and factual description of daily events, with personal comments held to a minimum;

5. Document a briefing of occurrences and important events between outgoing and incoming staff;

6. Contain a signature or initials of staff at the conclusion of their shift; and

7. Become a legal document of the facility and shall be maintained as such.

Proposed Regulations

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: **VR 270-01-0002. Regulations Governing the Educational Programs for Gifted Students.**

Statutory Authority: §§ 22.1-16 and 22.1-253.13:1 of the Code of Virginia.

Public Hearing Date: December 10, 1992 - 7 p.m.
Written comments may be submitted through January 15, 1993.
(See Calendar of Events section for additional information)

Summary:

This proposed regulation amends the existing regulations governing the educational program for gifted learners in Virginia. The changes reflect the most current literature and research relative to the identification of and programming for gifted students. These regulations are being promulgated to ensure that gifted students in kindergarten through grade 12 are identified and provided with an educational program that will enable them to achieve to their abilities.

Preamble:

Article VIII, Section 1 of the Virginia Constitution delineates the General Assembly's responsibility for education as follows:

"... shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth and shall seek to ensure that an educational program of high quality is established and continually maintained."

Section 2 of Article VIII requires the Board of Education to prescribe "... Standard of Quality for the several school divisions..." Standard 5 of such Standards of Quality, as enacted by the General Assembly, requires each school division to "... conduct a program acceptable to the Board of Education for the early identification of gifted and talented students." It is further stated that "... each school division shall offer appropriately differentiated instructional opportunities in accordance with guidelines of the Board of Education for identified gifted and talented students."

The requirements which follow set forth procedures for the development and operation of a divisionwide special program for gifted students. These requirements, when coupled with the Virginia Plan for the Gifted, provide guidelines to meet the aforesaid statutory requirements.

VR 270-01-0002. Regulations Governing the Educational Program for Gifted Students.

PART I.
APPLICABILITY AND DEFINITIONS.

Article ~~I~~ *1* .
Applicability.

§ 1.1. These regulations shall apply to all local school divisions in the Commonwealth effective ~~July 1, 1986~~ *July 1, 1993* .

Article ~~II~~ *2* .
Definitions.

§ 1.2. The words and terms, when used in these regulations, shall have the following meaning, unless the content clearly indicates otherwise:

"Appropriately differentiated curricula" for gifted students refer to curricula designed in response to their cognitive and effective needs. Such curricula provide emphasis on both accelerative and enrichment opportunities for (i) advanced content and pacing of instruction, (ii) original research or product, (iii) problem finding and solving, (iv) higher level thinking that leads to the generation of products, and (v) a focus on issues, themes, and ideas within and across areas of study. Curricular outcomes that specify expectations for advanced levels of performance shall be articulated at each grade level and within all program-relevant areas for gifted learners. Appropriate delivery systems shall support the differentiated curricula outcomes.

"Gifted students" means those students in kindergarten through grade 12 whose abilities and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated abilities and who have evidence of high performance *including leadership* capabilities in one or more of the ~~areas as follows~~ *following areas* :

1. ~~General intellectual ability~~ *Intellectual aptitude(s)* . ~~Students with advance general or specific information and an advance aptitude for abstract reasoning and conceptualization, whose mental development is accelerated to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.~~ *Students with advanced aptitude or conceptualization whose development is accelerated beyond their age peers as demonstrated by advanced skills, concepts, and creative expression in multiple general intellectual ability or in specific intellectual abilities.*

2. Specific academic ~~ability~~ *aptitude* . ~~Students who have aptitude in a specific area such as language arts or math, and who are consistently superior to the extent that they need and can benefit from specially planned educational services differentiated from those~~

~~generally provided by the general program experience.~~ *Students with specific aptitudes in selected academic areas: mathemathics; the sciences; or the humanities as demonstrated by advanced skills, concepts, and creative expression in those areas.*

3. ~~Visual or performing arts ability~~ *Arts aptitude* . ~~Students who excel consistently in the development of a product or performance in any of the visual and performing arts to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.~~

a. Students with specific aptitudes in selected performance areas, such as the visual arts, music, dance, or dramatic interpretation as demonstrated through advanced skills and creative expression in design, color kinesthetics, rhythm, tone or other aspects of expression.

b. Students with specific aptitudes in the technical or practical arts such as electronics, drafting, marketing, woodworking, and costuming as demonstrated by advanced skills and creative expression in those areas.

~~4. Practical arts ability. Students who excel consistently in the development of a product or performance in any area of vocational education to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.~~

~~5. Psychosocial ability. Students who exhibit keen sensitivity to the needs of others and who not only assume leadership roles, but also are accepted by others as leaders to the extent that they need and can benefit from specially planned educational services differentiated from those generally provided by the general program experience.~~

~~6. Creative and productive thinking ability. Students who exhibit advanced insights, outstanding imagination, and innovation and who consistently engage in integrating seemingly unrelated information to formulate new and positive solutions to conventional tasks. Creativity refers to the students' ability to produce both tangible and intangible end products involving the use of divergent and convergent thinking and problem solving to the extent that they need and can benefit from specially planned educational services differentiated from those generally provided by the general program experience.~~

"Identification" is the process of reviewing student data collected at the screening level and conducting further evaluation of student potential to determine the most qualified students for the specific gifted program available.

Identification/Placement Committee" means a standing committee ~~appointed by the principal~~ which is composed of ~~the principal or his designee~~ *a professional who knows the child* , ~~the referring teachers~~ *classroom teacher(s), others representing assessment specialists, gifted program staff and school administration,* and others deemed appropriate. This committee may also operate at the *school or* division level. ~~In such case, a committee of like nature would be appointed by the superintendent or his designee.~~ *In either case, consistent criteria must be established for the division.*

"Placement" means the determination of the appropriate educational option for each eligible student.

"Screening" is the process of creating the pool or potential candidates using multiple criteria through the referral process, review of test data or from other sources. Screening is the active search for students who should be evaluated for identification.

PART II.
RESPONSIBILITIES OF THE LOCAL SCHOOL DIVISIONS.

§ 2.1. The requirements set forth in this ~~section~~ *part* are applicable to local school divisions providing educational services for gifted students in kindergarten through grade 12.

Article ~~I~~ *1* .
Identification.

§ 2.2. Each school division shall establish and maintain a uniform procedure *with common criteria* for screening and identification of gifted students. *If the school division elects to identify and serve students with specific academic aptitudes, they shall include procedures for identification in mathematics, science and humanities.* These procedures will permit referrals from school personnel, parents, or legal guardians, other persons of related expertise, *peer referral* and self-referral of those students believed to be gifted. Pertinent information, records, and other performance evidence of referred students will be examined by a building level or division level identification committee. Further, the ~~committee~~ *committee(s)* will determine the eligibility of the referred students for differentiated programs. Students who are found to be eligible by the Identification/Placement Committee shall be offered a differentiated program by the school division.

§ 2.3. Each school division shall maintain a *division* review procedure for students whose cases are appealed. This procedure shall involve individuals, the majority of whom did not serve on the Identification/Placement Committee.

Article ~~II~~ *2* .
~~Assessment~~ *Criteria for Screening and Identification* .

§ 2.4. ~~No single criterion shall be used in determining~~

~~students who qualify for programs for the gifted. The eligibility of students for programs for the gifted shall be based on two or more of the following~~ *Eligibility of students for programs for the gifted shall be based on multiple criteria for screening and identification established by the school division, and designed to seek out high aptitude in all populations. Multiple criteria shall include three or more of the following categories:*

1. ~~Individual or group IQ test~~ *Assessment of appropriate student products, performance, and portfolio* ;

2. ~~Individual or group achievement test in specific ability areas~~ *Observation of in-classroom behavior* ;

3. ~~Creativity test(s) by trained personnel~~ *Appropriate rating scales, checklists, or questionnaires* ;

4. ~~Appropriate rating scales, checklists, interest inventories or questionnaires~~ *Individual interview* ;

5. ~~Previous accomplishments~~ *Individual or group ability tests* ;

6. ~~Pupil products judged by an expert in the area of product being judged~~ *Individual or group achievement/aptitude tests* ;

7. ~~Test(s) of special ability in the visual, performing, and practical arts~~ *Record of previous accomplishments (such as awards, honors, grades, etc.* ;

8. Additional valid and reliable measures or procedures.

If a program is designed to address general intellectual aptitude, ability measures must be included as one of the categories in the division identification plan. If a program is designed to address specific academic aptitude, an achievement or an aptitude measure in the specific academic area must be included as one of the categories in the division identification plan. Inclusion of a test score in a division identification plan does not indicate that an individual student must score at a prescribed level on the test(s) to be admitted to the program. No single criterion shall be used in determining students who qualify for programs for the gifted.

Article ~~III~~ *3* .
Local Plan.

§ 2.5. Each school division shall submit *to the Department of Education for approval* a plan for the education of gifted students. Modifications to the plan shall be reported to the Department of Education on dates specified by the ~~agency~~ *department* . The plan shall include the components as follow:

1. A statement of philosophy;

2. A statement of *program* goals and objectives;

3. Procedures for the early and on-going identification and placement of gifted students;

4. ~~Program design which includes curriculum goals and differentiated instruction for kindergarten through grade 12~~ *A procedure for notifying parents/legal guardians when additional testing or additional information is required during the identification process and for obtaining permission prior to placement of students in the appropriate program;*

5. ~~Procedures for the selection and training of personnel serving identified gifted students to include administrators/supervisors, pupil personnel specialists, and teachers~~ *A policy for notifying gifted students' change of placement within, and exit from the program, which includes an opportunity for parents who disagree with the committee(s) decision to meet and discuss their concern(s) with an appropriate administrator* ;

6. ~~Procedures for the evaluation of the effectiveness of the school division's program for gifted students;~~ *Assurances that records are maintained according to "Management of Student's Scholastic Record in the Public Schools of Virginia";*

7. ~~A procedure for notifying parents/legal guardians when additional testing or additional information is required during the assessment process and for obtaining permission prior to placement of student in the program~~ *Assurances that (i) testing and evaluation materials selected and administered are sensitive to cultural, racial, and linguistic differences, (ii) identification procedures are constructed so that they seek out high potential/ability in all populations; (iii) standardized tests have been validated for the specific purpose for which they are used; (iv) instruments are administered and interpreted by a trained personnel in conformity with the instructions of their producer* ;

8. ~~A policy for identified gifted students' entry into and exit from the program which includes an opportunity for levels of appeal with reasonable timelines and an opportunity for parents who disagree with the committee(s) decision to meet and discuss their concern(s) with an appropriate administrator;~~ *A comprehensive program for gifted students in grades K-12 to include appropriately differentiated curricula designed in response to their cognitive and effective needs. Such curricula provide emphasis on both accelerative and enrichment opportunities for (i) advanced content and pacing of instruction, (ii) original research, (iii) problem finding and solving, (iv) higher level thinking that leads to the generation of products, and (v) a focus on issues, themes, and ideas within and across areas of study;*

9. ~~Assurances that records are maintained according to~~

~~"Management of Students Scholastic Record into Public Schools of Virginia"~~ *Curricular outcomes that specify expectations for advanced levels of performance shall be articulated at each grade level and within all program-relevant areas for gifted learners. Appropriate delivery systems shall support the differentiated curricula outcomes* ;

10. ~~Assurances that testing and evaluative materials selected and administered (i) are neither culturally nor racially discriminatory; (ii) are sensitive to language differences; (iii) have been validated for the specific purpose for which they are used; and (iv) are administered and interpreted by trained personnel in conformance with the instructions by their producer~~ *Procedures for the selection/evaluation of teachers and for the training of personnel to include administrator/supervisor, teachers and support staff* ;

11. ~~Other information as required by the Department of Education.~~ *Procedures for the appropriate evaluation of the effectiveness of the school divisions's program for gifted student* ;

12. Other information as required by the Department of Education.

§ 2.6. Each school division shall ~~provide~~ *establish* a local advisory committee composed of parents, teachers, ~~and community members, and others whose purpose is to advise the school board through the division superintendent on the educational needs of gifted students; and to review annually the local plan for the education of gifted students and the extent to which the plan for the previous year was implemented.~~ *administrators, representatives of business and industry, and other community members. The purpose of this committee shall be to advise the school board through the division superintendent of the educational needs of all gifted students in the division. As a part of this goal, the committee shall review annually the local plan for the education of gifted students, including revisions, and determine the extent to which the plan for the previous year was implemented. The recommendations of the advisory committee shall be submitted in writing to the division superintendent.*

Article ~~IV~~ *4* .
Funding.

§ 2.7. State funds administered by the Department of Education for the education of gifted students shall be used to support only those activities identified in the school division's plan as approved by the Board of Education.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: **State Plan for Medical Assistance Relating to Discontinuing Coverage of Certain Optional Drugs and Fertility Services.**
VR 460-01-79.7. Pharmacy Services Rebate Agreement Terms.
VR 460-02-3.1100. Amount, Duration and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy.
VR 460-02-3.1200. Amount, Duration and Scope of Services Provided Medically Needy Groups: All.
VR 460-03-3.1100. Amount, Duration and Scope of Services.
VR 460-03.3.1105. Drugs or Drug Categories Which are not Covered. VR 460-02-4.1920. Methods and Standards Used for Establishing Payment Rates–Other Types of Care.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may submitted until 5 p.m. on January 15, 1993.

Summary:

The purpose of these proposed regulations is to (i) conform with federal requirements for rebates on certain drugs; (ii) redefine family planning services to exclude the coverage of certain fertility drugs and services; (iii) discontinue coverage of certain optional drugs; and (iv) modify the method of the payment of pharmaceutical dispensing fees to allow for more or less frequent dispensing as is appropriate per drug.

The sections of the State Plan for Medical Assistance which are affected by this regulatory action are the preprinted page 79g providing for drug rebates, Attachment 3.1 A pertaining to services covered for the Categorically Needy, Attachment 3.1 B pertaining to services covered for the Medically Needy, Supplement 1 to Attachment 3.1 A & B and Attachment 4.19 B pertaining to Methods and Standards Used for Establishing Payment Rates–Other Types of Care. Moreover, this regulation adds a new supplement, Supplement 5, to Attachment 3.1 A&B.

Drug Rebates

OBRA 90, provides federal matching payment for drugs covered under a rebate agreement. This section mandated that the Secretary of Health and Human Services enter into agreements with drug manufacturers to provide specified rebates to state Medicaid programs on a quarterly basis in order for a state to receive federal matching dollars for those drugs. Payment for covered outpatient drugs of a manufacturer must be covered in a rebate agreement in effect between the manufacturer and the Secretary on behalf of all states. Payment may also be made if the rebate agreement is between the manufacturer and the state, if the Secretary has delegated authority to the state to enter into such agreements.

Once this proposed regulation (page 79g) is adopted as a permanent regulation, it will supersede the existing identical emergency regulation.

Each state is required to report to each manufacturer and to the Health Care Financing Administration (HCFA) the total number of dosage units of each covered outpatient drug dispensed under the plan during the quarter. Drug manufacturers must also make price reports to the Secretary each quarter.

Fertility Services and Drugs

In addition, and as directed by the Board of Medical Assistance Services (BMAS), the Department is proposing to exclude from Medicaid coverage agents when used to promote fertility.

Fertility and infertility services can be divided into two categories which include surgical interventions and drug treatments. Previously, DMAS included the coverage of both fertility (family planning services such as surgical sterilizations and birth control pills) and infertility services (such as penile implants and reversals of tubal ligations) under the broad category of family planning services. BMAS approved the revision of the DMAS' definition of family planning services to include only those services and drugs directed towards the prevention of pregnancy or planning of contraception.

Optional Drugs

OBRA 90 also allows the states to exclude any or all of 11 categories of drugs regardless of whether or not a rebate agreement is in effect with the manufacturer. These categories of drugs, known as "optional drugs," are generally considered not medically necessary or are drugs with a very high potential for abuse. The Department is reviewing these 11 categories for the purpose of determining whether coverage will continue or the drugs will be excluded. The categories currently excluded from coverage are anorexiants when used for weight loss, over-the-counter medications for non-nursing home residents, products when used for topical hair growth, and drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness (DESI drugs).

The BMAS also directed the Department to exclude from coverage drugs when their purpose is for cosmetic reasons or to promote hair growth. Therefore, DMAS is proposing to exclude from coverage Minoxidil, when it has been prescribed for hair growth and agents containing hydroquinone or its derivatives, which have been prescribed solely for the depigmentation of skin.

Technical changes have been made to move existing policy language from Supplement 1 to the newly established Supplement 5.

Expired Drugs

OBRA 90 also required that Medicaid programs not reimburse for drugs which had been determined to be expired by their manufacturers. This policy must be included in the State Plan to conform with federal law and policies of HCFA.

Pharmaceutical Dispensing Fees

Certain drugs have unique federally mandated dispensing and patient monitoring requirements. The current State Plan language allows DMAS to reimburse for only one dispensing fee per month per prescription. The recommended change would allow DMAS to modify dispensing fees to suit unique circumstances, like the requirement to dispense clozapine weekly.

New drugs are constantly entering the marketplace. The number of available drugs that are "high-tech" or have the ability to cause serious and harmful side effects in their users is increasing. One example is clozapine which is highly toxic to bone marrow and causes the depletion of the white blood cells, the cells that fight infection in individuals. Because of this, the FDA requires an extensive monitoring system for clozapine users. The monitoring system requires the drug to be dispensed in no more than a 7-day supply and only after the patient has a blood test to confirm an adequate level of white blood cells. Because of the unique dispensing requirements for this drug, a fee is paid each time this drug is dispensed.

VR 460-01-79.7. Pharmacy Services Rebate Agreement Terms.

Citation

Act § 1927(b)(2)

§ 4.36. Pharmacy Services Rebate Agreement Terms.

The Commonwealth conforms to § 1927(b)(2) with regard to the reporting of information on the total number of dosage units of each covered outpatient drug dispensed under the plan during the quarter, and in such a manner as specified by the Secretary of Health and Human Resources and also shall promptly transmit a copy of such report to the Secretary. The Commonwealth also conforms to § 1927(b)(3)(D) with regard to assuring the confidentiality of the disclosure of the identity of a manufacturer or wholesaler and prices charged for drugs by such manufacturer or wholesaler.

VR 460-02-3.1100. Amount, Duration and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy.

1. Inpatient hospital services other than those provided in an institution for mental diseases.

Provided: ☐ No limitations ☒ With limitations*

2.a. Outpatient hospital services.

Provided: ☐ No limitations ☒ With limitations*

b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

☒ Provided: ☐ No limitations

☒ With limitations* ☐ Not provided.

c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

Provided: ☐ No limitations ☒ With limitations*

3. Other laboratory and x-ray services.

Provided: ☒ No limitations ☐ With limitations*

4.a. Skilled nursing facility services (other than services in an institution for mental diseases for individuals 21 years of age or older.

Provided: ☒ No limitations ☐ With limitations*

b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

☒ Provided: ☐ No limitations

☒ In excess of Federal requirements*

☐ Limited to Federal requirements

c. Family planning services and supplies for individuals of child-bearing age. (See Page 5 for Family Planning.)

☒ Provided: ☒ With limitations*

☐ Not provided ☐ No limitations

5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere. (See Page 5 for Physician's Services.)

☒ Provided: ☒ With limitations*

☐ Not provided ☐ No limitations

6. Medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. (See Page 8 for Other Practitioners.)

a. Podiatrists' Services.

☒ Provided: ☒ With limitations*

☐ Not provided ☐ No limitations

b. Optometrists' Services.

☒ Provided: ☒ With limitations*

☐ Not provided ☐ No limitations

c. Chiropractors' Services.

☐ Provided ☐ No limitations ☐ With limitations*

☒ Not provided

d. Other Practitioner's Services.

☒ Provided (Identified on attached sheet with description of limitations)* ☐ Not provided

7. Home health services. (See page 9 for Home Health.)

a. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

b. Home health aide services provided by a home health agency.

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

c. Medical supplies, equipment, and appliances suitable for use in the home.

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

d. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

8. Private duty nursing services.

☐ Provided ☐ No limitations ☐ With limitations*

☒ Not provided

9. Clinic services. (See Page 10, Clinic Services)

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

10. Dental Services. (See Page 11, Dental Services)

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

11. Physical therapy and related services. (See page 12 for PT and related services.)

a. Physical therapy.

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

b. Occupational therapy.

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

c. Services for individuals with speech, hearing, and language disorders. (Provided by or under supervision of a speech pathologist or audiologist) (See page 12, Physical Therapy and Related Services.)

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist. (See page 13 for Prescribed Drugs and Eyeglasses.)

a. Prescribed drugs.

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

b. Dentures.

☐ Provided ☐ No limitations ☐ With limitations*

☒ Not provided

c. Prosthetic devices.

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

d. Eyeglasses.

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan. (See page 14 for diagnostic and other services.)

a. Diagnostic services.

☐ Provided ☐ No limitations ☐ With limitations*

☒ Not provided

b. Screening services.

☐ Provided ☐ No limitations ☐ With limitations*

☒ Not provided

c. Preventive services.

☐ Provided ☐ No limitations ☐ With limitations*

☒ Not provided

d. Rehabilitative services. (See page 9, Home Health Services)

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided

14. Services for individuals age 65 or older in institutions for mental diseases. (See page 15 for IMD services for persons over 65.)

a. Inpatient hospital services.

☒ Provided ☒ No limitations ☐ With limitations*

☐ Not provided

b. Skilled nursing facility services.

☒ Provided ☒ No limitations ☐ With limitations*

☐ Not provided

c. Intermediate care facility.

☒ Provided ☒ No limitations ☐ With limitations*

☐ Not provided

15.a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with section

1902(a)(31)(A) of the Act, to be in need of such care.

☒ Provided ☐ No limitations ☐ With limitations*

☐ Not provided.

b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

☒ Provided ☒ No limitations ☐ With limitations*

☐ Not provided.

16. Inpatient psychiatric facility services for individuals under 22 years of age.

☐ Provided ☐ No limitations ☐ With limitations*

☒ Not provided.

17. Nurse-midwife services.

☒ Provided ☐ No limitations ☒ With limitations*

☐ Not provided.

18. Hospice care (in accordance with section 1905(o) of the Act).

☒ Provided ☒ No limitations ☐ with limitations*

☐ Not provided.

19. Case management services as defined in, and to the group specified in, Supplement 2 to Attachment 3.1-A (in accordance with section 1905(a)(19) or section 1915(g) of the Act)

☒ Provided ☒ With limitations

☐ Not provided

20. Extended services to pregnant women

a. Pregnancy-related and postpartum serrvices for 60 days after the pregnancy ends.

☒ Provided † ☐ No limitations ☒ With limitations*

b. Services for any other medical conditions that may complicate pregnancy.

☒ Provided † ☐ No limitations ☒ With limitations*

☐ Not provided

21. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with section 1920 of the Act).

☐ Provided † ☐ No limitations ☐ With limitations*

☒ Not provided

22. Respiratory care services (in accordance with section 1902(e)(9)(A) through (C) of the Act).

☐ Provided † ☐ No limitations ☐ With limitations*

☒ Not provided

23. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary.

a. Transportation

☒ Provided ☐ No limitations ☒ With limitations

☐ Not provided

b. Services of Christian Science nurses.

☐ Provided ☐ No limitations ☐ With limitations

☒ Not provided

c. Care and services provided in Christian Science sanitoria.

☒ Provided ☒ No limitations ☐ With limitations

☐ Not provided

d. Skilled nursing facility services for patient under 21 years of age.

☒ Provided ☒ No limitations ☐ With limitations

☐ Not provided

e. Emergency hospital services.

☒ Provided ☒ No limitations ☐ With limitations

☐ Not provided

f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

☐ Provided ☐ No limitations ☐ With limitations

☒ Not provided

24. Private health insurance premiums, coinsurance and deductibles when cost-effective (pursuant to P.L. 101-508 § 4402).

* Descriptions provided on attached sheet. See

Supplement 1 to Attachments 3.1 A and 3.1 B.

† List of major categories of services (e.g., inpatient hospital, physician, etc.) that are available as pregnancy-related services, and description of additional coverage of these services, if applicable, provided on attachment.

VR 460-02-3.1200. Amount, Duration and Scope of Services Provided Medically Needy Groups: All.

The following ambulatory services are provided.

Physicians Services
Outpatient Hospital Services
Clinic Services
Laboratory and X-Ray Services
EPSDT Services
Family Planning Services
Optometrist Services
Home Health Services
Dental Services for those under age 21
Physical Therapy and Related Services
Prescribed Drugs
Eyeglass Services
Nurse Midwives
Outpatient Rehabilitation
Extended Services to Pregnant Women

1. Inpatient hospital services other than those provided in an institution for mental diseases.

☒ Provided ☐ No limitations ☒ With limitations*

2.a. Outpatient hospital services.

☒ Provided ☐ No limitations ☒ With limitations*

b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

☒ Provided ☐ No limitations ☒ With limitations*

c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

☒ Provided ☐ No limitations ☒ With limitations*

3. Other laboratory and x-ray services.

☒ Provided ☐ No limitations ☒ With limitations*

4.a. Skilled nursing facility services (other than services in an institution for mental diseases for individuals 21 years of age or older.

☒ Provided ☒ No limitations ☐ With limitations*

b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

☒ Provided ☒ No limitations ☐ With limitations*

c. Family planning services and supplies for individuals of childbearing age.

☒ Provided: ☒ ☐ No limitations

☒ With limitations*

5. Physicians' services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere.

☒ Provided ☒ No limitations ☐ With limitations*

6. Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law.

a. Podiatrists' Services

☒ Provided ☐ No limitations ☒ With limitations*

b. Optometrists' Services

☒ Provided ☐ No limitations ☒ With limitations*

c. Chiropractors' Services

☐ Provided ☐ No limitations ☐ With limitations*

d. Other Practitioners' Services

☒ Provided ☐ No limitations ☒ With limitations*

7. Home Health Services

a. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

☒ Provided ☒ No limitations ☐ With limitations*

b. Home health aide services provided by a home health agency.

☒ Provided ☒ No limitations ☐ With limitations*

c. Medical supplies, equipment, and appliances suitable for use in the home.

☒ Provided ☐ No limitations ☒ With limitations*

d. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation faculity.

☒ Provided ☒ No limitations ☐ With limitations*

8. Private duty nursing services.

☐ Provided ☐ No limitations ☐ With limitations*

9. Clinic services.

☒ Provided ☐ No limitations ☒ With limitations*

10. Dental services.

☒ Provided ☐ No limitations ☒ With limitations*

11. Physical therapy and related services.

a. Physical therapy.

☒ Provided ☐ No limitations ☒ With limitations*

b. Occupational therapy.

☒ Provided ☐ No limitations ☒ With limitations*

c. Services for individuals with speech, hearing, and language disorders provided by or under supervision of a speech pathologist or audiologist.

☒ Provided ☐ No limitations ☒ With limitations*

12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

a. Prescribed drugs.

☒ Provided ☐ No limitations ☒ With limitations*

b. Dentures.

☐ Provided ☐ No limitations ☐ With limitations*

* Description provided on attachment.

c. Prosthetic devices.

☒ Provided ☐ No limitations ☒ With limitations*

d. Eyeglasses.

☒ Provided ☐ No limitations ☒ With limitations*

13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

a. Diagnostic services.

☐ Provided ☐ No limitations ☐ With limitations*

b. Screening services.

☐ Provided ☐ No limitations ☐ With limitations*

c. Preventive services.

☐ Provided ☐ No limitations ☐ With limitations*

d. Rehabilitative services.

☒ Provided ☐ No limitations ☒ With limitations*

14. Services for individuals age 65 or older in institutions for mental diseases.

a. Inpatient hospital services.

☐ Provided ☐ No limitations ☐ With limitations*

b. Skilled nursing facility services.

☐ Provided ☐ No limitations ☐ With limitations*

c. Intermediate care facility services.

☐ Provided ☐ No limitations ☐ With limitations*

15.a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with section 1902(a)(31)(a) of the Act, to be in need of such care.

☐ Provided ☐ No limitations ☐ With limitations*

b. Including such services in a public institution (or distinct part therof) for the mentally retarded or persons with related conditions.

☐ Provided ☐ No limitations ☐ With limitations*

16. Inpatient psychiatric facility services for individuals under 22 years of age.

☐ Provided ☐ No limitations ☐ With limitations*

17. Nurse-midwife services.

☒ Provided ☐ No limitations ☐ With limitations*

18. Hospice care (in accordance with section 1905(o) of the Act).

☒ Provided ☒ No limitations ☐ With limitations*

19. Case management services as defined in, and to the group specified in, Supplement 2 to ATTACHMENT 3.1-A (in accordance with § 1905(a)(19) or § 1915(g) of the Act).

☐ Provided ☐ With limitations

☐ Not provided

20. Extended services for pregnant women.

a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

☐ Provided ☐ No limitations ☐ With limitations*

b. Services for any other medical conditions that may complicate pregnancy.

☐ Provided ☐ No limitations ☐ With limitations*

☐ Not provided

21. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).

☐ Provided ☐ No limitations ☐ With limitations*

☐ Not provided

22. Respiratory care services (in accordance with section 1902(a)(9)(A) through (C) of the Act).

☐ Provided ☐ No limitations ☐ With limitations*

☒ Not provided

23. Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary.

a. Transportation.

☒ Provided ☐ No limitations ☒ With limitations*

b. Services of Christian Science nurses.

☐ Provided ☐ No limitations ☐ With limitations*

c. Care and services provided in Christian Science sanitorial.

☒ Provided ☒ No limitations ☐ With limitations*

d. Skilled nursing facility services provided for patients under 21 years of age.

☒ Provided ☒ No limitations ☐ With limitations*

e. Emergency hospital services.

☒ Provided ☒ No limitations ☐ With limitations*

f. Personal care services in recipients's home, prescribed in accordance with a plan of treatment and furnished by a qualified person under supervision of a registered nurse.

☐ Provided ☐ No limitations ☐ With limitations*

* Description provided on attachment. See Supplement 1 to Attachments 3.1 A and 3.1 B.

† List of major categories of services (e.g., inpatient hospital, physician, etc.) that are available as pregnancy-related services, and description of additional coverage of these services, if applicable, provided on attachment.

VR 460-03-3.1100. Amount, Duration and Scope of Services.

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Repealed.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

J. The department may exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of their ongoing hospital utilization review peformance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterlization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilzation review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.

2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review.

3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.

4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.

5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

1. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

a. Are furnished to outpatients;

b. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

c. Are furnished by an institution that:

(1) Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

(2) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

2. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

3. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

The same service limitations apply to rural health clinics as to all other services.

2c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

The same service limitations apply to FQHCs as to all other services.

§ 3. Other laboratory and x-ray services.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

§ 4. Skilled nursing facility services, EPSDT and family planning.

4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4c. Family planning services and supplies for individuals of child-bearing age.

A. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

B. Family planning services shall be defined as those services which delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from

those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. These limitations also apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

I. Repealed.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometric services.

1. Diagnostic examination and optometric treatment procedures and services by ophthamologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further

restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

§ 7. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a professional nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medically necessary supplies, equipment, and appliances are covered for patients of the home health agency. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, respiratory equipment and oxygen, and ostomy supplies, as authorized by the agency.

3. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners.

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office.

c. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales).

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface; mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes.

e. Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989).

f. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and nonlegend drugs.

g. Orthotics, including braces, splints, and supports.

h. Home or vehicle modifications.

i. Items not suitable for or used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.).

j. Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.).

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; dental sealants; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. The following services are also covered through preauthorization: medically necessary full banded orthodontics, for handicapping malocclusions, minor tooth guidance or repositioning appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges. The following service is not covered: routine bases under restorations.

D. The state agency may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray – two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once per 5 years); extractions, orthodontics, tooth guidance appliances, permanent crowns, and bridges, endodontics, patient education and sealants (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

11a. Physical Therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing homes' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11b. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see Page 1, General and Page 12, Physical Therapy and Related Services.)

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in number 1. The program shall meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11d. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service within a 60-day period. A recipient may receive a maximum of 48 visits annually without authorization. The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. This request must be signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

11e. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a school division, or a rehabilitation agency shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;

2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. Include a copy of the physician's orders and plan of care;

5. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. Describe changes in each patient's condition and response to the rehabilitative treatment plan;

7. (Except for school divisions) describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination; and

8. In school divisions, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

11f. Service limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Physical therapy, occupational therapy and speech-language services are to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered except for over-the-counter drugs when prescribed for nursing facility residents.

1. ~~Nonlegend drugs, except insulin, syringes, needles, diabetic test strips for clients under 21 years of age, and family planning supplies are not covered by Medicaid. This limitation does not apply to Medicaid~~

~~recipients who are in skilled and intermediate care facilities.~~ *The following prescribed, nonlegend drugs/drug devices shall be covered: (i) insulin, (ii) syringes, (iii) needles, (iv) diabetic test strips for clients under 21 years of age, (v) family planning supplies, and (vi) those prescribed to nursing home residents.*

2. Legend drugs *are covered* , with the exception of anorexiant drugs prescribed for weight loss and ~~transdermal drug delivery systems,~~ *the drugs or classes of drugs identified in Supplement 5* ~~are covered. Coverage of anorexiants for other than weight loss requires preauthorization~~ .

~~3. The Program will not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.~~ *Repealed.*

4. ~~Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, prescriptions for Medicaid recipients for specific multiple source drugs shall be filled with generic drug products listed in the Virginia Voluntary Formulary unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.~~ *Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR § 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.*

5. ~~New drugs, except for Treatment Investigational New Drugs (Treatment IND), are not covered until approved by the board, unless a physician obtains prior approval. The new drugs listed in Supplement 1 to the New Drug Review Program Regulations (VR 460-05-2000.1000) are not covered.~~ *New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).*

6. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

A. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

B. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

A. Intensive physical rehabilitation:

1. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision A 4 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision A 4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

B. Community mental health services.

Definitions. The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1(§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

1. Mental health services. The following services, with their definitions, shall be covered:

a. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 260 days, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.

c. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 260 days, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment.

d. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 312 days, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

e. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

2. Mental retardation services. Day health and rehabilitation services shall be covered and the following definitions shall apply:

a. Day health and rehabilitation services (limited to 500 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

(1) Self-care and hygiene skills;

(2) Eating and toilet training skills;

(3) Task learning skills;

(4) Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);

(5) Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);

(6) Medication management;

(7) Travel and related training to and from the training sites and service and support activities;

(8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

b. There shall be two levels of day health and rehabilitation services: Level I and Level II.

(1) Level I services shall be provided to individuals who meet the basic program eligibility requirements.

(2) Level II services may be provided to individuals who meet the basic program eligibility requirements and for whom one or more of the following indicators are present.

(a) The individual requires physical assistance to meet basic personal care needs (toilet training, feeding, medical conditions that require special attention).

(b) The individual has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish individual service goals.

(c) The individual requires extensive personal care or constant supervision to reduce or eliminate behaviors which preclude full participation in programming. A formal, written behavioral program is required to address behaviors such as, but not limited to, severe depression, self injury, aggression, or self-stimulation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the

Act).

A. Covered hospice services shall be defined as those services allowed under the provisions of Medicare law and regulations as they relate to hospice benefits and as specified in the Code of Federal Regulations, Title 42, Part 418.

B. Categories of care.

As described for Medicare and applicable to Medicaid, hospice services shall entail the following four categories of daily care:

1. Routine home care is at-home care that is not continuous.

2. Continuous home care consists of at-home care that is predominantly nursing care and is provided as short-term crisis care. A registered or licensed practical nurse must provide care for more than half of the period of the care. Home health aide or homemaker services may be provided in addition to nursing care. A minimum of eight hours of care per day must be provided to qualify as continuous home care.

3. Inpatient respite care is short-term inpatient care provided in an approved facility (freestanding hospice, hospital, or nursing facility) to relieve the primary caregiver(s) providing at-home care for the recipient. Respite care is limited to not more than five consecutive days.

4. General inpatient care may be provided in an approved freestanding hospice, hospital, or nursing facility. This care is usually for pain control or acute or chronic symptom management which cannot be successfully treated in another setting.

C. Covered services.

1. As required under Medicare and applicable to Medicaid, the hospice itself shall provide all or substantially all of the "core" services applicable for the terminal illness which are nursing care, physician services, social work, and counseling (bereavement, dietary, and spiritual).

2. Other services applicable for the terminal illness that shall be available but are not considered "core" services are drugs and biologicals, home health aide and homemaker services, inpatient care, medical supplies, and occupational and physical therapies and speech-language pathology services.

3. These other services may be arranged, such as by contractual agreement, or provided directly by the hospice.

4. To be covered, a certification that the individual is terminally ill shall have been completed by the physician and hospice services must be reasonable and necessary for the palliation or management of the terminal illness and related conditions. The individual must elect hospice care and a plan of care must be established before services are provided. To be covered, services shall be consistent with the plan of care. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no coverage will be provided.

5. All services shall be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

a. Nursing care. Nursing care shall be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. Medical social services. Medical social services shall be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

c. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of his or her license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.

d. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

e. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at

home.

f. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

g. Drugs and biologicals. Only drugs used which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

h. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

i. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

D. Eligible groups.

To be eligible for hospice coverage under Medicare or Medicaid, the recipient must have a life expectancy of six months or less, have knowledge of the illness and life expectancy, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician and the hospice medical director must certify the life expectancy. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. For the first 90-day period of hospice coverage, the hospice must obtain, within two calendar days after the period begins, a written certification statement signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician if the individual has an attending physician. For the initial 90-day period, if the hospice cannot obtain written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

2. For any subsequent 90-day or 30-day period or a subsequent extension period during the individual's lifetime, the hospice must obtain, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is that his or her life expectancy is six months or less and the signature(s) of the physician(s). The hospice must maintain the certification statements.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A in accordance with § 1915(g)(1) of the Act.

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

Nonemergency transportation is administered by local health department jurisdictions in accordance with reimbursement procedures established by the Program.

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science sanitoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

Emergency Services for Aliens (17.e)

No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services are necessary for the treatment of an emergency medical condition of the alien.

Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;

2. Serious impairment of bodily functions; or

3. Serious dysfunction of any bodily organ or part.

Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

Claims for conditions which do not meet emergency critieria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

VR 460-03-3.1105. Drugs or Drug Categories Which are not Covered.

§ 1. Agents when used for weight gain or loss.

Coverage of anorexiants for other than weight loss requires medical justification.

§ 2. Agents when used for cosmetic purposes or hair growth.

A. Minoxidil shall not be covered when prescribed for hair growth or other cosmetic purposes.

B. Agents containing hydroquinone or its derivatives which are used solely for depigmentation of the skin.

§ 3. Agents used to promote fertility.

Agents used to promote fertility shall not be covered.

§ 4. Expired drugs.

Drugs dispensed past the labeled expiration date shall not be covered.

§ 5. DESI drugs.

The program shall not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

§ 6. Nonlegend drugs.

Nonlegend drugs, with those exceptions shown in Supplement 1, shall not be covered.

VR 460-02-4.1920. Methods and Standards Used for Establishing Payment Rates–Other Types of Care.

The policy and the method to be used in establishing payment rates for each type of care or service (other than inpatient hospitalization, skilled nursing and intermediate care facilities) listed in § 1905(a) of the Social Security Act and included in this State Plan for Medical Assistance are described in the following paragraphs:

a. Reimbursement and payment criteria will be established which are designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive the medical care and services included in the Plan at least to the extent these are available to the general population.

b. Participation in the program will be limited to providers of services who accept, as payment in full, the state's payment plus any copayment required under the State Plan.

c. Payment for care or service will not exceed the amounts indicated to be reimbursed in accord with the policy and methods described in this Plan and payments will not be made in excess of the upper limits described in 42 CFR 447.304(a). The state agency has continuing access to data identifying the maximum charges allowed: such data will be made available to the Secretary, HHS, upon request.

d. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The

professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals

2. Outpatient hospital services excluding laboratory

a. Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency room and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency room visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency rooms and reimburse for nonemergency care rendered in emergency rooms at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in Supplement 1 to Attachment 4.19 B, rendered in emergency rooms which DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for (2) above. Services not meeting certain criteria shall be paid under the methodology of (1) above. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

3. Rural health clinic services provided by rural health clinics or other federally qualified health centers defined as eligible to receive grants under the Public Health Services Act §§ 329, 330, and 340.

4. Rehabilitation agencies

5. Comprehensive outpatient rehabilitation facilities

6. Rehabilitation hospital outpatient services.

e. Fee-for-service providers. (1) Payment for the following services shall be the lowest of: State agency fee schedule, actual charge (charge to the general public), or Medicare (Title XVIII) allowances:

(a) Physicians' services (Supplement 1 has obstetric/pediatric fees.)

The following limitations shall apply to emergency physician services.

Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency room visit.

Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency rooms and reimburse physicians for nonemergency care rendered in emergency rooms at a reduced rate.

(i) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in Supplement 1 to Attachment 4.19 B, rendered in emergency rooms which DMAS determines are nonemergency care.

(ii) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(iii) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for (ii) above. Services not meeting certain criteria shall be paid under the methodology of (i) above. Such criteria shall include, but not be limited to:

a. The initial treatment following a recent obvious injury.

b. Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

c. The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

d. A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

e. Services provided for acute vital sign changes as specified in the provider manual.

f. Services provided for severe pain when combined with one or more of the other guidelines.

(iv) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(v) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the

accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

(b) Dentists' services

(c) Mental health services including:

Community mental health services

Services of a licensed clinical psychologist

Mental health services provided by a physician

(d) Podiatry

(e) Nurse-midwife services

(f) Durable medical equipment

(g) Local health services

(h) Laboratory services (Other than inpatient hospital)

(i) Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling)

(j) X-Ray services

(k) Optometry services

(l) Medical supplies and equipment.

(m) Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by Supplement 3.

(2) Hospice services payments must be no lower than the amounts using the same methodology used under part A of Title XVIII, and adjusted to disregard offsets attributable to Medicare coinsurance amounts.

f. Payment for pharmacy services shall be the lowest of items (1) through (5) (except that items (1) and (2) will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is greater than the HCFA upper limit of VMAC cost) subject to the conditions, where applicable, set forth in items (6) and (7) below:

(1) The upper limit established by the Health Care Financing Administration (HCFA) for multiple source drugs pursuant to 42 CFR §§ 447.331 and 447.332, as determined by the HCFA Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

(2) The Virginia Maximum Allowable Cost (VMAC) established by the agency plus a dispensing fee, if a legend drug, for multiple source drugs listed on the VVF.

(3) The Estimated Acquisition Cost (EAC) which shall be based on the published Average Wholesale Price (AWP) minus a percent discount established by the methodology set out in (a) through (c) below. (Pursuant to OBRA 90 § 4401, from January 1, 1991, through December 31, 1994, no changes in reimbursement limits or dispensing fees shall be made which reduce such limits or fees for covered outpatient drugs).

(a) Percent discount shall be determined by a statewide survey of providers' acquisition cost.

(b) The survey shall reflect statistical analysis of actual provider purchase invoices.

(c) The agency will conduct surveys at intervals deemed necessary by DMAS, but no less frequently than triennially.

(4) A mark-up allowance (150%) of the Estimated Acquisition Cost (EAC) for covered nonlegend drugs and oral contraceptives.

(5) The provider's usual and customary charge to the public, as identified by the claim charge.

(6) ~~Payment for pharmacy services will be as described above; however, payments for legend drugs (except oral contraceptives) will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Payments will be reduced by the amount of the established copayment per prescription by noninstitutionalized clients with exceptions as provided in federal law and regulation.~~ *Payment for pharmacy services will be as described above; however, payment for legend drugs will include the allowed cost for the drug plus only one dispensing fee per month for each specific drug. However, oral contraceptives shall not be subject to the one month dispensing rule. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements.*

(7) The Program recognizes the unit dose delivery system of dispensing drugs only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose add-on fee and an allowance for the cost of unit dose packaging established by the state agency. The maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC based on the 60th percentile cost level identified by the state agency or HCFA's upper limits. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state

agency.

(8) Historical determination of EAC. Determination of EAC was the result of an analysis of FY'89 paid claims data of ingredient cost used to develop a matrix of cost using 0 to 10% reductions from AWP as well as discussions with pharmacy providers. As a result of this analysis, AWP minus 9.0% was determined to represent prices currently paid by providers effective October 1, 1990.

The same methodology used to determine AWP minus 9.0% was utilized to determine a dispensing fee of $4.40 per prescription as of October 1, 1990. A periodic review of dispensing fee using Employment Cost Index - wages and salaries, professional and technical workers will be done with changes made in dispensing fee when appropriate. As of October 1, 1990, the Estimated Acquisition Cost will be AWP minus 9.0% and dispensing fee will be $4.40.

g. All reasonable measures will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients including those measures specified under 42 USC 1396(a)(25).

h. The single state agency will take whatever measures are necessary to assure appropriate audit of records whenever reimbursement is based on costs of providing care and services, or on a fee-for-service plus cost of materials.

i. Payment for transportation services shall be according to the following table:

TYPE OF SERVICE	PAYMENT METHODOLOGY
Taxi services	Rate set by the single state agency
Wheelchair van	Rate set by the single state agency
Nonemergency ambulance	Rate set by the single state agency
Emergency ambulance	Rate set by the single state agency
Volunteer drivers	Rate set by the single state agency
Air ambulance	Rate set by the single state agency
Mass transit	Rate charged to the public
Transportation agreements	Rate set by the single state agency
Special Emergency transportation	Rate set by the single state agency

j. Payments for Medicare coinsurance and deductibles for noninstitutional services shall not exceed the allowed charges determined by Medicare in accordance with 42 CFR 447.304(b) less the portion paid by Medicare, other third party payors, and recipient copayment requirements of this Plan. See Supplement 2 of this methodology.

k. Payment for eyeglasses shall be the actual cost of the frames and lenses not to exceed limits set by the single state agency, plus a dispensing fee not to exceed limits set by the single state agency.

l. Expanded prenatal care services to include patient education, homemaker, and nutritional services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

m. Targeted case management for high-risk pregnant women and infants up to age two and for community mental health and mental retardation services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

n. Reimbursement for all other nonenrolled institutional and noninstitutional providers.

(1) All other nonenrolled providers shall be reimbursed the lesser of the charges submitted, the DMAS cost to charge ratio, or the Medicare limits for the services provided.

(2) Outpatient hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable outpatient cost-to-charge ratio, updated annually, for enrolled outpatient hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Outpatient hospitals that are nonenrolled shall submit claims on DMAS invoices.

(3) Nonenrolled providers of noninstitutional services shall be paid on the same basis as enrolled in-state providers of noninstitutional services. Nonenrolled providers of physician, dental, podiatry, optometry, and clinical psychology services, etc., shall be reimbursed the lesser of the charges submitted, or the DMAS rates for the services.

(4) All nonenrolled noninstitutional providers shall be reviewed every two years for the number of Medicaid recipients they have served. Those providers who have had no claims submitted in the past 12 months shall be declared inactive.

(5) Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

o. Refund of overpayments.

(1) Providers reimbursed on the basis of a fee plus cost of materials.

(a) When DMAS determines an overpayment has been made to a provider, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

(b) If the provider cannot refund the total amount of the overpayment within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

(c) In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

(d) Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (ii) the issue date factfinding conference, if the provider does not file an appeal, or (iii) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

p. Dispute resolution for state-operated providers

(1) Definitions.

(a) "DMAS" means the Department of Medical Assistance Services.

(b) "Division director" means the director of a division of DMAS.

(c) "State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

(2) Right to request reconsideration.

(a) A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

(b) The appropriate DMAS division must receive the reconsideration request within 30 calendar days after the provider receives its Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

(3) Informal review. The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought, the amount of the adjustment sought, and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional

information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

(4) Division director action. The division director shall consider any recommendation of his designee and shall render a decision.

(5) DMAS director review. A state-operated provider may, within 30 days after receiving the informal review decision of the division director, request that the DMAS director or his designee review the decision of the division director. The DMAS director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

(6) Secretarial review. If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 days after the receipt of the decision of the DMAS director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other Cabinet Secretary as appropriate. Any determination by such Secretary or Secretaries shall be final.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-01-48. General Relief Program - Deeming Income from Alien Sponsors.**

Statutory Authority: § 63.1-25 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through January 15, 1993.
(See Calendar of Events section for additional information)

Summary:

This regulation requires that in determining sponsored aliens' eligibility for General Relief, the previously disregarded income and resources of sponsors be considered as available to the sponsored aliens for a period of three years following the aliens' entry into the United States as permanent residents.

VR 615-01-48. General Relief Program - Deeming Income from Alien Sponsors.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise:

"Affidavit of support" means a statement of a sponsor's income, resources, and willingness to support. It (Form I-134 or similar form) is filed with the Immigration and Naturalization Service by a United States resident who sponsors an alien seeking admission to the United States as a permanent resident. The affidavit is made for the purpose of assuring the United States government that the sponsored alien will not become a public charge in the United States.

"Aid to Families with Dependent Children" means the federal program administered by the Virginia Department of Social Services that provides support to a relative for eligible children.

"General Relief" means an optional program financed by state and local funds to provide maintenance or emergency assistance to individuals who do not qualify for aid in a federal category. The program is supervised by the state Department of Social Services and administered by local agencies.

"Immigration and Naturalization Service" means a branch of the United States Department of Justice delegated authority to enforce the Immigration and Nationality Act and all other laws relating to the immigration and naturalization of aliens.

"Permanent resident status" means having been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

"Sponsor" means a person, or any public or private agency or organization, that executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry into the United States as a permanent resident.

"Sponsored alien" means an immigrant, who due to the likelihood of his becoming a public charge, would have been excluded from lawful admission into the United States. As a condition of this immigrant's admission, a person or public or private agency or organization executed an affidavit of support or similar agreement guaranteeing the federal, state, and local governments that the immigrant would not become a public charge.

"Standard of assistance" means the amount of reimbursable assistance based on the size of the assistance unit and the local department of social services group. Local agencies are placed in one of three groups based on shelter expenses in the area.

"Supplemental Security Income" means Title XVI of the Social Security Act which provides benefits to an aged, blind, or disabled individual based on financial need.

PART II.
DEEMING OF SPONSOR'S INCOME AND

RESOURCES.

§ 2.1. Three-year limit.

For a period of three years from the month the Immigration and Naturalization Service grants the alien permanent resident status, the income and resources of the sponsor and the sponsor's spouse, if they are living together, shall be considered to be the unearned income of the alien.

The spouse's income and resources will be counted even if the sponsor and spouse married after the agreement to sponsor was signed.

§ 2.2. Program ineligibility.

Any alien sponsored by a public or private agency or organization shall be ineligible for General Relief for a period of three years following entry unless the sponsored alien can provide documentation that the sponsor no longer exists or is unable to meet the alien's needs.

If a sponsored alien has been found ineligible for Aid to Families with Dependent Children or Supplemental Security Income due to sponsorship, eligibility for General Relief does not exist.

§ 2.3. Responsibility of alien.

A sponsored alien is responsible for obtaining the cooperation of his sponsor and supplying the local department of social services with any information and documentation necessary to determine the alien's eligibility for General Relief benefits.

§ 2.4. Income of sponsor deemed to a sponsored alien.

The gross amount (with certain deductions) of earned and unearned income of the sponsor and the sponsor's spouse, if living together, shall be considered available as unearned income available to the alien(s) being sponsored. Items that will be deducted from the sponsor's income are:

1. 20% of net earned income not exceeding $175;

2. The standard of assistance (at 100% of need) for the sponsor and those individuals living in the household who the sponsor claims as dependents on his federal income tax statement excluding any members of the assistance unit;

3. Any amounts paid by the sponsor or the sponsor's spouse to individuals not living in the household who are claimed by him as dependents on his federal income tax statement; and

4. Any payments of alimony or child support for individuals not living in the household.

§ 2.5. Resources of sponsor deemed to a sponsored alien.

The resources of the sponsor and the sponsor's spouse determined to be available to the alien shall be the total amount of their nonexempt resources, as defined in the General Relief Program policy, reduced by $1,500.

§ 2.6. Exception to deeming.

The deeming of a sponsor's income and resources is not applicable to any alien who:

1. Applied for General Relief prior to July 1, 1993;

2. Entered the United States as a refugee, parolee, or political asylee;

3. Is a Cuban or Haitian entrant;

4. Is sponsored by a person receiving Aid to Families with Dependent Children, Supplemental Security Income, or General Relief;

5. Is an Amerasian from Vietnam; or

6. Is the spouse of the sponsor.

§ 2.7. Sponsorship of more than one alien.

If a person is the sponsor of two or more aliens, the income and resources of the sponsor and the sponsor's spouse, to the extent that they would be deemed the income and resources of any one of the aliens, shall be divided into equal shares among the sponsored aliens regardless of whether they are living together.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

REGISTRAR'S NOTICE: The repeal of the following regulations is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Corrections will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 230-40-008. Standards for Secure Detention. REPEALED.**

Statutory Authority: § 53.1-5 of the Code of Virginia.

Effective Date: December 16, 1992.

Summary:

Sections 16.1-284.1 and 53.1-237 through 53.1-260 of the Code of Virginia previously authorized the Board of Corrections to prescribe program standards and to monitor the activities of the Department of Corrections in implementing standards relating to youth and juvenile programs. These standards were developed to measure the effectiveness of programs and facilities for locally operated secure detention facilities.

The standards are being repealed by the Board of Corrections since there is no longer statutory authority for the Board of Corrections over youth activities. Responsibility has been transferred through the Code of Virginia to the Board and Department of Youth and Family Services, thus the regulations are no longer appropriately maintained within the Department of Corrections' regulatory scheme. Accordingly, these regulations are repealed.

Title of Regulation: **VR 230-40-014. Standards for Youth Institutional Services. REPEALED.**

Statutory Authority: § 53.1-5 of the Code of Virginia.

Effective Date: December 16, 1992.

Summary:

Sections 16.1-284.1 and 53.1-237 through 53.1-260 of the Code of Virginia previously authorized the Board of Corrections to prescribe program standards and to monitor the activities of the Department of Corrections in implementing standards relating to youth and juvenile programs. These standards were developed to measure the effectiveness of programs and facilities for Youth Institutional Services.

The standards are being repealed by the Board of Corrections since there is no longer statutory authority for the Board of Corrections over youth activities. Responsbilility has been transferred through the Code of Virginia to the Board and Department of Youth and Family Services, thus the regulations are no longer appropriately maintained within the Department of Corrections' regulatory scheme. Accordingly, these regulations are repealed.

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

NOTICE: The Board of Game and Inland Fisheries is exempted from the Administrative Process Act (§ 9-6.14:4 of the Code of Virginia); however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

Title of Regulation:

VR 325-01. Definitions and Miscellaneous.
VR 325-01-1. In General.
VR 325-03. Fish.
VR 325-03-1. Fishing Generally.
VR 325-03-2. Trout Fishing.
VR 325-03-5. Aquatic Invertebrates, Amphibians, Reptiles and Nongame Fish.

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 1993.

Summary:

Summaries are not provided since, in most instances the summary would be as long or longer than the full text.

VR325-01-1. DEFINITIONS AND MISCELLANEOUS.

VR 325-01-1. In General.

§ 19. Same - "Designated stocked trout waters."

When used in regulations of the board, "designated stocked trout waters" will include those waters that are stocked with harvestable-sized trout and are listed by the director in the annual Trout Stocking Plan. Designated

stocked trout waters are posted by the department with appropriate "stocked trout waters" signs.

VR 325-03. FISH.

VR 325-03-1. Fishing Generally.

§ 12. Same - Special daily permit for fishing in Clinch Mountain Wildlife Management Area, Douthat State Park Lake and Crooked and Wilson creeks.

It shall be unlawful to fish in the Clinch Mountain Wildlife Management Area (except in Little Tumbling Creek), in Douthat State Park Lake and in Wilson Creek ~~from Douthat Lake upstream to the park boundary~~ *both above the lake to the park boundary and downstream to the lower USFS boundary,* and in the Crooked Creek fee fishing area in Carroll County without having first paid to the department for such privilege a daily use fee. Such daily use fee shall be in addition to all other license fees provided by law. Upon payment of the daily use fee the department shall issue a special permit which shall be signed and carried by the person fishing. *This fee will be required from the opening day of trout season through Labor Day at Clinch Mountain Wildlife Management Area (except Little Tumbling Creek) and at Crooked Creek fee fishing area in Carroll County, and from the opening day of trout season through September 30 at Douthat State Park Lake and Wilson Creek. During the remainder of the year, these waters will revert to designated stocked trout waters and a trout license will be required. Upon written request from Douthat State Park and subsequent approval from the department, the department may recognize clearly marked children only fishing areas within Douthat State Park. Within these "children only" areas, children 12 years old or less may fish without the daily use fee if accompanied by a fully licensed adult who has purchased a valid daily permit.*

§ 13. Special provision applicable to a portion of Witcher Creek (Cedar Key) within Smith Mountain Lake.

It shall be lawful to fish using only bait with a single point unweighted bait hook (no artificial lures allowed) in that portion of Witcher Creek in Smith Mountain Lake from behind the no wake buoy line at the mouth of the cove known as Cedar Key to the back of the cove [~~*during the months of April and May*~~ *from April 15 to May 31, both dates inclusive*] . *For the purpose of this regulation, a single point unweighted bait hook is defined as a hook that does not have a weight affixed to the hook. Any other weight must be attached to the line at least 12 inches above the hook (no weights below the hook). weights below the hook).*

VR 325-03-2. Trout Fishing.

[§ 4. Same - Clinch Mountain Wildlife Management Area; Douthat State Park Lake; Wilson Creek; Crooked Creek; Crooked Creek fee fishing area ; ~~South Holston Reservoir~~ .

The daily creel limit for taking trout in the Clinch Mountain Wildlife Management Area (except in Little Tumbling Creek), in Douthat State Park Lake and in Wilson Creek ~~from Douthat Lake upstream to the park boundary~~ *both above the lake to the park boundary and downstream to the lower USFS boundary,* and in the Crooked Creek fee fishing area in Carroll County shall be five ~~and in South Holston Reservoir the limit shall be seven.~~]

§ 6. Methods and equipment used in fishing.

All seines, nets and the use of more than one rod or one line by any one person are prohibited while fishing in ~~waters stocked with trout~~ *designated stocked trout waters* , except it shall be lawful to use a hand-landing net to land fish legally hooked in all waters.

It shall be unlawful to fish with more than one hook attached to a single line in ~~streams stocked with trout~~ *designated stocked trout waters* and such hook must be ~~baited~~ *used* with ~~natural~~ *bait* or artificial ~~bait~~ *lures* ; provided, however, this shall not be construed to prohibit the use of artificial lures with more than one hook.

§ 7. Fishing in *designated* stocked *trout* water prohibited except during open season.

It shall be unlawful to fish in designated *stocked trout* waters ~~stocked with trout by the Department or other public body~~ except during the open season for taking trout. *Fishing may continue in nondesignated stocked trout waters and wild trout streams during the closed season for taking trout, but all trout caught during this closed season must be immediately released, except as otherwise specifically provided in the sections appearing in this regulation.*

§ 8. Fishing in certain waters after obtaining creel limit of trout prohibited.

It shall be unlawful to fish in ~~waters designated as trout waters or~~ *designated stocked trout waters* or in the waters covered by §§ 11, 12, *12.1* , ~~and~~ 13 , *and 14.1 (during the period from May 16 through September 30)* of this regulation after the daily creel limit of trout is obtained.

§ 9. Feeding or baiting trout prohibited in designated *stocked* trout waters.

It shall be unlawful to feed or bait trout in designated *stocked* trout waters of the Commonwealth.

§ 11. Special provisions applicable to certain portions of Jackson River, Smith Creek and Snake Creek.

It shall be lawful to fish using only artificial lures with single hooks in that portion of Jackson River in Bath County from the swinging bridge located just upstream from the mouth of Muddy Run, upstream 3.0 miles to the last ford on FS 481D, in that portion of Smith Creek in

Alleghany County from the Clifton Forge Reservoir Dam downstream to a sign at the Forest Service boundary above the C&O Dam, and on Snake Creek in Carroll County upstream from its mouth to Hall's Fork on Big Snake Fork and to the junction of Routes 922 and 674 on Little Snake Fork. All trout caught in these waters under 12 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any ~~natural~~ bait or any trout under 12 inches in length in these areas.

§ 12. Special provisions applicable to certain portions of Buffalo Creek, Dan River, Sinking Creek, Smith Creek and Smith River.

A. It shall be lawful year around to fish using only artificial lures with single hooks in that portion of Buffalo Creek in Rockbridge County from the confluence of Colliers Creek upstream 2.9 miles to the confluence of North and South Buffalo Creeks, in that portion of Smith River in Henry County from signs below the east bank of Towne Creek for a distance of approximately three miles downstream and in that portion of the Dan River in Patrick County from Talbott Dam approximately six miles downstream to a sign posted just upstream from the confluence of Dan River and Townes Reservoir.

B. It shall be lawful year around to fish using only artificial flies with single hooks in that portion of Sinking Creek in Giles County from a cable and department sign 0.4 miles below the State Route 703 low-water bridge upstream 1.8 miles to a cable and department sign 0.1 miles above the Reynolds Farm covered bridge, in that portion of Sinking Creek in Craig County from a cable and department sign 1.0 mile below the State Route 642 Bridge upstream to a cable and department sign 0.5 miles above the State Route 642 Bridge, and in that portion of Smith Creek in Rockingham County from a sign posted 1.0 miles below the confluence of Lacy Spring to a sign posted 0.4 miles above Lacy Spring.

C. The daily creel limit in these waters shall be two trout a day year around and the size limit shall be 16 inches or more in length. All trout caught in these waters under 16 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any ~~natural~~ bait or any trout under 16 inches in length in these areas.

§ 12-1. Special provision applicable to certain portions of Mossy Creek.

It shall be lawful year around to fish using only artificial flies with single hooks in that portion of Mossy Creek in Augusta County upstream from the Augusta/Rockingham County line to a sign posted at the confluence of Joseph's Spring. The daily creel limit in these waters shall be one trout a day year around and the size limit shall be 20 inches or more in length. All trout caught in these waters under 20 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any ~~natural~~ bait or any trout under 20 inches in length in this area.

§ 13. Special provision applicable to certain portions of Conway River, Green Cove Creek, Little Stony Creek, North Creek, North Fork Buffalo River, St. Mary's River, Whitetop Laurel and Ramsey's Draft.

It shall be lawful to fish using only artificial lures with single hooks in that portion of the Conway River and its tributaries in Greene and Madison counties within the Rapidan Wildlife Management Area, in that portion of Green Cove Creek in Washington County from Route 859 downstream to its mouth, in that portion of Little Stony Creek in Giles County within the Jefferson National Forest, *in that portion of Little Stony Creek in Shenandoah County within the George Washington National Forest,* in that portion of North Creek in Botetourt County and its tributaries upstream from the first bridge above North Creek Campground, in the North Fork Buffalo River and its tributaries in Amherst County within the George Washington National Forest, in that portion of St. Mary's River in Augusta County and its tributaries upstream from the gate at the George Washington National Forest property line, in that portion of Whitetop Laurel in Washington County upstream from the first railroad trestle above Taylor Valley to the mouth of Green Cove Creek at Creek Junction, and in that portion of Ramsey's Draft and its tributaries in Augusta County within the George Washington National Forest. All trout caught in the Conway River and its tributaries under eight inches in length and all trout caught in the other above named streams under nine inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any ~~natural~~ bait, any trout under eight inches in length on the Conway River or its tributaries or any trout under nine inches in length on the other above named streams.

§ 14. Special provision applicable to Stewarts Creek Trout Management Area ~~and~~ ; certain portions of Dan, Rapidan and Staunton rivers , *the East Fork of Chestnut Creek,* and *their* tributaries.

It shall be lawful year ~~round~~ *around* to fish for trout using only artificial lures with single hooks within the Stewarts Creek Trout Management Area in Carroll County, in the Rapidan and Staunton rivers and their tributaries upstream from a sign at the Lower Shenandoah National Park boundary in Madison County, ~~and~~ in the Dan River and its tributaries between the Townes Dam and the Pinnacles Hydroelectric Project powerhouse in Patrick County *and in the East Fork of Chestnut Creek (Farmer's Creek) and its tributaries upstream from the Blue Ridge Parkway in Grayson and Carroll counties* . All trout caught in these waters must be immediately returned to the water. No trout may be in possession at any time in these areas.

§ 14-1. Special provisions applicable to certain portions of

Back Creek, North River and South River.

It shall be lawful to fish from October 1 through May 15, both dates inclusive, using only artificial lures with single hooks *in Back Creek (Bath County) from the Route 600 bridge just below the Virginia Power Back Creek Dam downstream 1.5 miles to the Route 600 bridge at the lower boundary of the Virginia Power Recreational Area,* in the North River (Augusta County) from the base of Elkhorn Dam downstream 1.5 miles to a sign posted at the head of Staunton City Reservoir and in the South River from the Second Street Bridge upstream 2.4 miles to the base of Rife Loth Dam in the city of Waynesboro. From October 1 through May 15, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in possession any natural bait or trout. During the period of May 16 through September 30, these waters shall revert to general trout regulations and the above restrictions will not apply. general trout regulations and the above restrictions will not apply.

VR 325-03-5. Aquatic Invertebrates, Amphibians, Reptiles and Nongame Fish.

§ 1. Taking aquatic invertebrates, amphibians, reptiles and nongame fish for private use.

A. ~~Generally~~ *Possession limits* .

Except as otherwise provided for in § 29.1-418 of the Code of Virginia, VR 325-01-1, § 13 and the sections of this regulation, it shall be lawful to [~~take~~ *capture*] and possess [*live*] for private use and not for sale no more than five individuals of any single *native or naturalized (as defined in VR 325-01-1 § 5)* species of amphibian and reptile and 20 individuals of any single *native or naturalized (as defined in VR 325-01-1 § 5)* species of aquatic invertebrate and nongame fish ~~not~~ *unless* specifically listed ~~in this subsection and 50 individuals, in aggregate, of any species of "fish bait" listed in subsection B of this section.~~ *below:*

1. The following species may be taken in unlimited numbers from inland waters statewide: carp, bowfin, longnose gar, mullet, bullhead catfish, suckers, gizzard shad, *blueback* herring, white perch, yellow perch, alewife, stoneroller (hornyhead), fathead minnow, golden shiner and goldfish.

2. The following species may be taken in unlimited numbers from inland waters below the fall line: channel catfish, white catfish and blue catfish. ~~These possession limits apply to all methods of taking aquatic invertebrates, amphibians, reptiles and nongame fish species unless otherwise stated in the Code of Virginia or specific regulations.~~

3. For the purpose of this regulation, "fish bait" shall be defined as native or naturalized species of minnows and chubs (Cyprinidae), salamanders, crayfish, and hellgrammites. The possession limit for [*taking*] *"fish bait" shall be 50 individuals in aggregate, unless said person has purchased "fish bait" and has a receipt specifying the number of individuals purchased by species. However, stonerollers (hornyheads), fathead minnows, golden shiners and goldfish may be* [*taken and*] *possessed in unlimited numbers as provided for in subdivision 1 of this subsection.*

4. The daily limit for bullfrogs and snapping turtles shall be 15 and bullfrogs and snapping turtles may not be taken from the banks or waters of designated stocked trout waters.

B. ~~"Fish Bait."~~ *Methods of taking species in subsection A.*

~~"Fish bait," as used in this section, shall be defined as minnows and chubs (Cyprinidae), salamanders, crayfish and hellgrammites.~~ Except as *otherwise* provided for in *the Code of Virginia,* VR 325-01-1, § 13, *other regulations of the board,* ~~and VR 325-03-5, § 1, subsection A,~~ and except in any waters where the use of nets is prohibited, ~~it shall be lawful to take "fish bait" for private use, but not for sale. Possession limit shall be 50 individuals in aggregate, unless said person has purchased "fish bait" and has a receipt specifying the number of individuals by species purchased. However, stonerollers (hornyheads), fathead minnows, golden shiners and goldfish may be possessed in unlimited numbers as provided for in subsection A of this section. "Fish Bait".~~ *the species listed in subsection A* may only be taken *by hand, hook and line,* with a seine not exceeding four feet in depth by 10 feet in length, an umbrella type net not exceeding five by five feet ~~in diameter~~ *square* , small minnow traps with throat openings no larger than one inch in diameter, cast nets not to exceed ~~four~~ *six* feet in radius and hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet (such cast net and hand-held bow nets when so used shall not be deemed dip nets under the provisions of § 29.1-416 of the Code of Virginia). *Bullfrogs may also be taken by gigging or bow and arrow* [*and, from private waters, by firearms no larger than .22 caliber rimfire*].

~~C. Bullfrogs. - It shall be lawful to take bullfrogs for private use except from the banks or waters of designated trout waters. The daily limit for bullfrogs shall be 15.~~

~~D.~~ *C. Areas restricted from taking* mollusks.

Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, *it shall be unlawful to* ~~the taking of~~ *take* mussels and the spiny riversnail (Io fluvialis) ~~shall be prohibited~~ in the Tennessee drainage in Virginia (Clinch, Powell and the North, South and Middle Forks of the Holston Rivers and tributaries), and *it shall be unlawful to* ~~the taking of~~ *take* mussels ~~is prohibited~~ in the James River and tributaries west of U.S. Route 29 and in the entire North Fork of the Shenandoah River.

~~E.~~ *D. Areas restricted from taking* salamanders.

Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, *it shall be unlawful to* ~~the taking of~~ *take* salamanders ~~shall be prohibited~~ in Grayson Highlands State Park and on National Forest lands in the Jefferson National Forest in those portions of Grayson, Smyth and Washington counties bounded on the east by State Route 16, on the north by State Route 603 and on the south and west by U.S. Route 58.

§ 3. Taking of snapping turtles, crayfish and hellgrammites for sale.

It shall be lawful to take snapping turtles, crayfish and hellgrammites for sale : [; ~~with the following daily possession limits: crayfish and hellgrammites - 50 in aggregate and snapping turtles - 15. Commercial operations may possess unlimited quantities of crayfish, hellgrammites, and snapping turtles when possession is accompanied by a valid invoice or bill of sale from an individual taking such animals, provided no more than 50 crayfish and hellgrammites in aggregate or 15 snapping turtles can be purchased in any single day from an individual who collected these animals from within the Commonwealth~~] .

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: **VR 460-02-3.1400. Methods of Providing Transportation.**
VR 460-03-3.1100. Amount, Duration and Scope of Services.
VR 460-04-8.3. Client Medical Management Program.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: January 1, 1993.

Summary:

This policy will discontinue the prior authorization requirement for nonemergency transportation for recipients to and from their medical appointments.

The Code of Federal Regulations, § 431.53, provides that a State Plan must specify that the Medicaid agency will assure necessary transportation for recipients to and from providers and that it will describe the methods that will be used to meet this requirement. Also, § 440.170(a) defines transportation as including expenses for travel determined to be necessary by the agency to secure medical examinations and treatment for a recipient. Transportation may only be furnished by a provider to whom direct vendor payment can appropriately be made by the agency. Travel expenses may include the cost of transportation for the recipient by ambulance, taxicab, common carrier, or other appropriate means.

Prior to the emergency regulation, all nonemergency transportation had to be preauthorized by the local health department (in the locality in which the recipient resides) or one of five pilot projects, working out of the local departments of social services. To obtain Medicaid payment for transportation, the recipient had to secure prior authorization by contacting the appropriate local agency. Once the local agency verified the recipient's current Medicaid eligibility and the recipient selected the desired provider, the local agency scheduled the trip. Prior to providing the service, the provider obtained his Medicaid billing invoice from the local agency. Once the transportation service had been rendered, the provider completed the mileage covered on the invoice and returned it to the local authorizing agency. The local agency verified that prior authorization was granted, signed the invoice and submitted it to the Medicaid fiscal agent for payment. In an evaluation of the costly preauthorization process conducted by local health departments and the pilot sites, it was determined that this process resulted in minimal denial of recipient requests for transportation. As a matter of fact, the DMAS Division of Client Appeals received only six appeals during 1991 because transportation was denied due to the preauthorization process.

Since the preauthorization process has not proven effective, DMAS saw no need to continue preauthorization of transportation. The agreements with the pilot sites expired December 31, 1991, so action was taken to discontinue preauthorization of transportation. To date, DMAS' experience with the emergency regulation has been positive with service providers, local health departments, and recipients.

With the Governor's approval, effective January 1, 1992, the requirements associated with prior authorization of nonemergency transportation were eliminated including the manual post-service verification of each claim by local health departments. This monitoring of claims payment is now being accomplished by system edits and ongoing monitoring by DMAS staff. Recipients requiring transportation to covered medical appointments will make their own arrangements with the Medicaid enrolled provider of their choice.

Local health departments throughout the state under an interagency agreement between DMAS and the Department of Health assist those recipients who require help with locating transportation providers and distribute bus and toll tickets. It is the providers' responsibility to verify recipients' current Medicaid eligibility by reviewing eligibility cards or by the use of the automated Recipient Eligibility Verification System (REVS) using the toll free number. Appropriate utilization of transportation services by both recipients and providers will be monitored by the DMAS' Division of Program Compliance as well as

operational staff of the Division of Client Services.

DMAS is making two technical corrections in this final regulation package to two other regulations which have language concerning transportation paralleling Attachment 3.1 D. The technical correction is being made to Attachment 3.1 A and B, Supplement 1, item 21, (VR 460-03-3.1100). This correction causes the Supplement 1 language to parallel the final regulation language of Attachment 3.1 D. The technical correction to the Client Medical Management regulations (VR 460-04-8.3) merely deletes the reference to transportation being preauthorized.

VR 460-02-3.1400. Methods of Providing Transportation.

~~§ 1.0. Transportation of recipients to and from providers of services covered by this plan is available in either of two categories: ambulance and non-ambulance. In either category, preauthorization for the service is required from the local health departments, except under emergency conditions. Ambulet is not an authorization form of transportation.~~

~~§ 2.0. Requirements for transportation must be expressed by an eligible recipient to a local office of the State Agency. The local office assures that transportation is not otherwise available to the recipient and is necessary to receive a covered service, arranges for transportation service as required, and subsequently verifies the accuracy of transportation carrier billing after service is rendered. In an emergency, after-the-fact preauthorizations are provided as justified.~~

~~§ 3.0. All ambulance operators must meet State licensing standards and enroll as accepted providers with the State Agency. All non-ambulance carriers must provide transportation in accordance with prior agreements on services and rates, or negotiated with local office of the State Agency.~~

~~§ 4.0. In addition to ambulances, the following modes of transportation will be allowable for recipients: common use bus (intra-city and inter-city), commercial taxicabs, and special projects (such as OEO and other grant projects) vehicles. Air travel will be authorized only when known to be essential to a critical need of the recipient. In responding to recipient requests, the transportation mode will be provided which will assure that economical services, adequate to need, will be furnished. A recipient's right to a free choice of providers will be preserved in compliance with 42 CFR 431.51. The obligation of the Program to assure that payment is made only where transportation is not otherwise available to a recipient will also be preserved.~~

~~§ 5.0. Payment may be made to an individual, recruited by an eligible recipient, for non-emergency transportation, on the basis of a fee per loaded passenger mile with no waiting time.~~

§ 1. Transportation of recipients to and from providers of services covered by this plan is available in either of two categories: emergency and nonemergency. In either category, arrangements for transportation shall be made between recipients and the transportation providers for covered medical services.

§ 2. Eligible recipients will seek the most economical means of transportation to their medical appointments. These arrangements will be made with an enrolled transportation provider of the recipients' choice.

§ 3. Ambulances, wheelchair vans, and taxis must be licensed to provide services in the Commonwealth by the appropriate state or local licensing agency. Registered drivers must be licensed to operate a motor vehicle in the Commonwealth and must maintain automobile insurance.

§ 4. Payment for transportation may only be made when transportation is not otherwise available to recipients. The following modes of transportation shall be allowable for recipients: ambulance, wheelchair van, common user bus (intra-city and inter-city), registered driver, and commercial taxicabs. Air travel may be preauthorized only when known to be essential to a critical need of the recipient. In responding to recipients' requests, the mode of transportation will be that which assures economical transporation services that are adequate to meet recipients' medical needs. Recipients' right to a free choice of providers shall be preserved in compliance with 42 CFR 431.51.

§ 5. Payment may be made to an individual, through the Registered Driver Program, who has been recruited by an eligible recipient, for nonemergency transportation, on the basis of a fee per loaded passenger mile with no coverage of waiting time.

VR 460-03-3.1100. Amount, Duration and Scope of Services.

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage

when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Repealed.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

J. The department may exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of their ongoing hospital utilization review peformance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterlization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilzation review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of

inpatient stays.

2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review.

3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.

4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.

5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

1. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

a. Are furnished to outpatients;

b. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

c. Are furnished by an institution that:

(1) Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

(2) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

2. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

3. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

The same service limitations apply to rural health clinics as to all other services.

2c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

The same service limitations apply to FQHCs as to all other services.

§ 3. Other laboratory and x-ray services.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

§ 4. Skilled nursing facility services, EPSDT and family planning.

4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4c. Family planning services and supplies for individuals of child-bearing age.

Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. These limitations also apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

I. Repealed.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometric services.

1. Diagnostic examination and optometric treatment procedures and services by ophthamologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine

and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

§ 7. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a professional nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medically necessary supplies, equipment, and appliances are covered for patients of the home health agency. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, respiratory equipment and oxygen, and ostomy supplies, as authorized by the agency.

3. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners.

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office.

c. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales).

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface; mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes.

e. Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989).

f. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not

require a physician's prescription; sugar and salt substitutes; support stockings; and nonlegend drugs.

g. Orthotics, including braces, splints, and supports.

h. Home or vehicle modifications.

i. Items not suitable for or used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.).

j. Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.).

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; dental sealants; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. The following services are also covered through preauthorization: medically necessary full banded orthodontics, for handicapping malocclusions, minor tooth guidance or repositioning appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges. The following service is not covered: routine bases under restorations.

D. The state agency may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray – two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once per 5 years); extractions, orthodontics, tooth guidance appliances, permanent crowns, and bridges, endodontics, patient education and sealants (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

11a. Physical Therapy.

A. Services for individuals requiring physical therapy are

provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing homes' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11b. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see Page 1, General and Page 12, Physical Therapy and Related Services.)

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and [~~Speech~~ *Speech-Language*] Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in number 1. The program shall meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11d. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service within a 60-day period. A recipient may receive a maximum of 48 visits annually without authorization. The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. This request must be signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

11e. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a school division, or a rehabilitation agency shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;

2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. Include a copy of the physician's orders and plan of care;

5. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. Describe changes in each patient's condition and response to the rehabilitative treatment plan;

7. (Except for school divisions) describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination; and

8. In school divisions, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

11f. Service limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the

services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Physical therapy, occupational therapy and speech-language services are to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

1. Nonlegend drugs, except insulin, syringes, needles, diabetic test strips for clients under 21 years of age, and family planning supplies are not covered by Medicaid. This limitation does not apply to Medicaid recipients who are in skilled and intermediate care facilities.

2. Legend drugs, with the exception of anorexiant drugs prescribed for weight loss and transdermal drug delivery systems, are covered. Coverage of anorexiants for other than weight loss requires preauthorization.

3. The Program will not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, prescriptions for Medicaid recipients for specific multiple source drugs shall be filled with generic drug products listed in the Virginia Voluntary Formulary unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

5. New drugs, except for Treatment Investigational New Drugs (Treatment IND), are not covered until approved by the board, unless a physician obtains prior approval. The new drugs listed in Supplement 1 to the New Drug Review Program Regulations (VR 460-05-2000.1000) are not covered.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

A. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

B. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

A. Intensive physical rehabilitation:

1. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision A 4 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision A 4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides

intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

B. Community mental health services.

Definitions. The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1(§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

1. Mental health services. The following services, with their definitions, shall be covered:

a. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 260 days, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.

c. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 260 days, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment.

d. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 312 days, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

e. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

2. Mental retardation services. Day health and rehabilitation services shall be covered and the following definitions shall apply:

a. Day health and rehabilitation services (limited to 500 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

(1) Self-care and hygiene skills;

(2) Eating and toilet training skills;

(3) Task learning skills;

(4) Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);

(5) Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);

(6) Medication management;

(7) Travel and related training to and from the training sites and service and support activities;

(8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

b. There shall be two levels of day health and rehabilitation services: Level I and Level II.

(1) Level I services shall be provided to individuals who meet the basic program eligibility requirements.

(2) Level II services may be provided to individuals who meet the basic program eligibility requirements and for whom one or more of the following indicators are present.

(a) The individual requires physical assistance to meet basic personal care needs (toilet training, feeding, medical conditions that require special attention).

(b) The individual has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish individual service goals.

(c) The individual requires extensive personal care or constant supervision to reduce or eliminate behaviors which preclude full participation in programming. A formal, written behavioral program is required to address behaviors such as, but not limited to, severe depression, self injury, aggression, or self-stimulation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the

Act).

A. Covered hospice services shall be defined as those services allowed under the provisions of Medicare law and regulations as they relate to hospice benefits and as specified in the Code of Federal Regulations, Title 42, Part 418.

B. Categories of care.

As described for Medicare and applicable to Medicaid, hospice services shall entail the following four categories of daily care:

1. Routine home care is at-home care that is not continuous.

2. Continuous home care consists of at-home care that is predominantly nursing care and is provided as short-term crisis care. A registered or licensed practical nurse must provide care for more than half of the period of the care. Home health aide or homemaker services may be provided in addition to nursing care. A minimum of eight hours of care per day must be provided to qualify as continuous home care.

3. Inpatient respite care is short-term inpatient care provided in an approved facility (freestanding hospice, hospital, or nursing facility) to relieve the primary caregiver(s) providing at-home care for the recipient. Respite care is limited to not more than five consecutive days.

4. General inpatient care may be provided in an approved freestanding hospice, hospital, or nursing facility. This care is usually for pain control or acute or chronic symptom management which cannot be successfully treated in another setting.

C. Covered services.

1. As required under Medicare and applicable to Medicaid, the hospice itself shall provide all or substantially all of the "core" services applicable for the terminal illness which are nursing care, physician services, social work, and counseling (bereavement, dietary, and spiritual).

2. Other services applicable for the terminal illness that shall be available but are not considered "core" services are drugs and biologicals, home health aide and homemaker services, inpatient care, medical supplies, and occupational and physical therapies and speech-language pathology services.

3. These other services may be arranged, such as by contractual agreement, or provided directly by the hospice.

4. To be covered, a certification that the individual is terminally ill shall have been completed by the physician and hospice services must be reasonable and necessary for the palliation or management of the terminal illness and related conditions. The individual must elect hospice care and a plan of care must be established before services are provided. To be covered, services shall be consistent with the plan of care. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no coverage will be provided.

5. All services shall be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

a. Nursing care. Nursing care shall be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. Medical social services. Medical social services shall be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

c. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of his or her license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.

d. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

e. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at

home.

f. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

g. Drugs and biologicals. Only drugs used which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

h. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

i. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

D. Eligible groups.

To be eligible for hospice coverage under Medicare or Medicaid, the recipient must have a life expectancy of six months or less, have knowledge of the illness and life expectancy, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician and the hospice medical director must certify the life expectancy. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. For the first 90-day period of hospice coverage, the hospice must obtain, within two calendar days after the period begins, a written certification statement signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician if the individual has an attending physician. For the initial 90-day period, if the hospice cannot obtain written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

2. For any subsequent 90-day or 30-day period or a subsequent extension period during the individual's lifetime, the hospice must obtain, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is that his or her life expectancy is six months or less and the signature(s) of the physician(s). The hospice must maintain the certification statements.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A in accordance with § 1915(g)(1) of the Act.

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

[~~Nonemergency~~ ~~transportation~~ ~~is~~ ~~administered~~ ~~by~~ ~~local health~~ ~~department~~ ~~jurisdictions~~ ~~in~~ ~~accordance~~ ~~with~~ ~~reimbursement~~ ~~procedures~~ ~~established~~ ~~by~~ ~~the~~ ~~Program.~~ *Transportation services are provided to Virginia Medicaid recipients to ensure that they have necessary access to and from providers of all medical services. Both emergency and nonemergency services are covered. The single state agency may enter into contracts with friends of recipients, nonprofit private agencies, and public carriers to provide transportation to Medicaid recipients.*

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science sanitoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

Emergency Services for Aliens (17.e)

No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services are necessary for the treatment of an emergency medical condition of the alien.

Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;

2. Serious impairment of bodily functions; or

3. Serious dysfunction of any bodily organ or part.

Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

Claims for conditions which do not meet emergency critieria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

VR 460-04-8.3. Client Medical Management Program.

§ 1. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

"APA" means the Administrative Process Act established by Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Abuse by recipients" means practices by recipients which are inconsistent with sound fiscal or medical practices and result in unnecessary costs to the Virginia Medicaid Program.

"Abuse by providers" means practices which are inconsistent with sound fiscal, business, or medical practices and result in unnecessary costs to the Virginia Medicaid Program or in reimbursement for a level of utilization or pattern of services that is not medically necessary.

"Card-sharing" means the intentional sharing of a recipient eligibility card for use by someone other than the recipient for whom it was issued, or a pattern of repeated unauthorized use of a recipient eligibility card by one or more persons other than the recipient for whom it was issued due to the failure of the recipient to safeguard the card.

"Client Medical Management Program for recipients" means the recipients' utilization control program designed to prevent abuse and promote improved and cost efficient medical management of essential health care for noninstitutionalized recipients through restriction to one primary care provider and one pharmacy. Referrals may not be made to providers restricted through the Client Medical Management Program, nor may restricted providers serve as covering providers.

"Client Medical Management Program for providers" means the providers' utilization control program designed to complement the recipient abuse and utilization control program in promoting improved and cost efficient medical management of essential health care. Restricted providers may not serve as designated providers for restricted recipients. Restricted providers may not serve as referral or covering providers for restricted recipients.

"Contraindicated medical care" means treatment which is medically improper or undesirable and which results in duplicative or excessive utilization of services.

"Contraindicated use of drugs" means the concomitant use of two or more drugs whose combined pharmacologic action produces an undesirable therapeutic effect or induces an adverse effect by the extended use of a drug with a known potential to produce this effect.

"Covering provider" means a provider designated by the primary provider to render health care services in the temporary absence of the primary provider.

"DMAS" means the Department of Medical Assistance Services.

"Designated provider" means the provider who agrees to be the primary health care provider or designated

pharmacy from whom the restricted recipient must first attempt to seek health care services.

"Diagnostic category" means the broad classification of diseases and injuries found in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) which is commonly used by providers in billing for medical services.

"Drug " means a substance or medication intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease as defined by the Virginia Drug Control Act (§ 54.1-524.2 et seq. of the Code of Virginia).

"Duplicative medical care" means two or more practitioners concurrently treat the same or similar medical problems or conditions falling into the same diagnostic category, excluding confirmation for diagnosis, evaluation, or assessment.

"Duplicative medications" means more than one prescription of the same drug or more than one drug in the same therapeutic class.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Excessive medical care" means obtaining greater than necessary services such that health risks to the recipient or unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services or obtaining duplicative services.

"Excessive medications" means obtaining medication in excess of generally acceptable maximum therapeutic dosage regimens or obtaining duplicative medication from more than one practitioner.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Health care" means any covered services, including equipment or supplies, provided by any individual, organization, or entity that participates in the Virginia Medical Assistance Program.

"Medical emergency" means a situation in which a delay in obtaining treatment may cause death or serious impairment of the health of the recipient.

"Medical management of essential health care" means a case management approach to health care in which the designated primary physician has responsibility for assessing the needs of the patient and making referrals to other physicians and clinics as needed. The designated pharmacy has responsibility for monitoring the drug regimen of the patient.

"Noncompliance" means failing to follow Client Medical Management Program procedures, or a pattern of utilization which is inconsistent with sound fiscal or medical practices. Noncompliance includes, but is not limited to, failure to follow a recommended treatment plan or drug regimen; failure to disclose to a provider any treatment or services provided by another provider; or requests for medical services or medications which are not medically necessary.

"Not medically necessary" means an item or service which is not consistent with the diagnosis or treatment of the patient's condition or an item or service which is duplicative, contraindicated, or excessive.

"Pattern" means duplication or occurring more than once.

"Practitioner" means a health care provider licensed, registered, or otherwise permitted by law to distribute, dispense, prescribe and administer drugs or otherwise treat medical conditions.

"Provider" means the individual or facility registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Psychotropic drugs" means drugs which alter the mental state. Such drugs include, but are not limited to, morphine, barbiturates, hypnotics, antianxiety agents, antidepressants, and antipsychotics.

"Recipient" means the individual who is eligible, under Title XIX of the Social Security Act, to receive Medicaid covered services.

"Recipient eligibility card" means the document issued to each Medicaid family unit, listing names and Medicaid numbers of all eligible individuals within the family unit.

"Restriction" means an administrative action imposed on a recipient which limits access to specific types of health care services through a designated primary provider or an administrative action imposed on a provider to prohibit participation as a designated primary provider, referral, or covering provider for restricted recipients.

"Social Security Act" means the the Act, enacted by the 74th Congress on August 14, 1935, which provides for the general welfare by establishing a system of federal old age benefits, and by enabling the several states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws.

"State Plan for Medical Assistance" or "the Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Surveillance and Utilization Review Subsystem (SURS)" means a computer subsystem of the Medicaid Management Information System (MMIS) which collects claims data and computes statistical profiles of recipient and provider activity and compares them with that of their particular peer group.

"Therapeutic class" means a group of drugs with similar pharmacologic actions and uses.

"Utilization control" means the control of covered health care services to assure the use of cost efficient, medically necessary or appropriate services.

§ 2. Client Medical Management Program for recipients.

A. Purpose.

The Client Medical Management Program is a utilization control program designed to prevent abuse and promote improved and cost efficient medical management of essential health care.

B. Authority.

1. Federal regulations at 42 CFR § 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program and 42 CFR § 455.1 through 16 require the Medicaid agency to conduct investigations of abuse by recipients.

2. Federal regulations at 42 CFR § 431.54 (e) allow states to restrict recipients to designated providers when the recipients have utilized services at a frequency or amount that is not medically necessary in accordance with utilization guidelines established by the state. 42 CFR § 455.16(c)(4) provides for imposition of sanctions for instances of abuse identified by the agency.

C. Identification of Client Medical Management Program participants.

DMAS shall identify recipients for review from computerized reports such as but not limited to Recipient SURS or by referrals from agencies, health care professionals, or other individuals.

D. Recipient evaluation for restriction.

1. DMAS shall review recipients to determine if services are being utilized at a frequency or amount that results in a level of utilization or a pattern of services which is not medically necessary or which exceeds the thresholds established in these regulations. Evaluation of utilization patterns can include but is not limited to review by the department staff of medical records or computerized reports generated by the department reflecting claims submitted for physician visits, drugs/prescriptions, outpatient and emergency room visits, lab and diagnostic procedures, hospital admissions, and referrals.

2. Abusive activities shall be investigated and, if appropriate, the recipient shall be reviewed for restriction. Recipients demonstrating unreasonable questionable patterns of utilization or exceeding reasonable levels of utilization shall be reviewed for restriction.

3. DMAS may restrict recipients if any of the following activities or patterns or levels of utilization are identified. These activities or patterns or levels of utilization include but shall not be limited to:

a. Exceeding 200% of the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class for a period exceeding four weeks.

b. Two occurrences of having prescriptions for the same drugs filled two or more times on the same or the subsequent day.

c. Utilizing services from three or more prescribers and three or more dispensing pharmacies in a three-month period.

d. Receiving more than 24 prescriptions in a three-month period.

e. Receiving more than 12 psychotropic prescriptions or more than 12 analgesic prescriptions or more than 12 prescriptions for controlled drugs with potential for abuse in a three-month period.

f. Exceeding the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class for a period exceeding four weeks. In addition, such drugs must be prescribed by two or more practitioners.

g. Receiving two or more drugs, duplicative in nature or potentially addictive (even within acceptable therapeutic levels), dispensed by more than one pharmacy or prescribed by more than one practitioner for a period exceed four weeks.

h. Utilizing three or more different physicians of the same type or specialty in a three-month period for treatment of the same or similar conditions.

i. Two or more occurrences of seeing two or more physicians of the same type or specialty on the same or subsequent day for the same or similar diagnosis.

j. Duplicative, excessive, or contraindicated utilization of medications, medical supplies, or appliances dispensed by more than one pharmacy or prescribed by more than one practitioner for the time period specified by DMAS.

k. Duplicative, excessive, or contraindicated utilization of medical visits, procedures, or diagnostic tests from more than one practitioner for the time period specified by DMAS.

l. Use of emergency hospital services for three or more emergency room visits for nonemergency care during a three-month period.

m. One or more providers recommends restriction for medical management because the recipient has demonstrated inappropriate utilization practices.

n. A pattern of noncompliance which is inconsistent with the sound fiscal or medical practices. Noncompliance is characterized by, but not limited to:

(1) Failure to disclose to a provider any treatment or services provided by another provider; or

(2) Failure to follow a drug regimen or other recommended treatment; or

(3) Requests for medical services or medications which are not medically necessary.

o. Use of [~~preauthorized~~] transportation services with no corresponding medical services.

p. One or more documented occurrences of a recipient's use of the eligibility card to obtain drugs under false pretenses, which includes, but is not limited to the purchase or attempt to purchase these drugs via a forged or altered prescription.

q. One or more documented occurrences of card-sharing.

r. One or more documented occurrences of alteration of the recipient eligibility card.

E. Recipient restriction procedures.

1. DMAS shall advise affected recipients by written notice of the proposed restriction under the Client Medical Management Program. Written notice shall include an explanation of restriction procedures and the recipient's right to appeal the proposed action.

2. The recipient shall have the opportunity to select designated providers. If a recipient fails to respond by the date specified in the restriction notice, DMAS shall select designated providers.

3. DMAS shall not implement restriction if a valid appeal is noted. (See § 2 K.)

4. DMAS shall restrict recipients to their designated providers for 18 months.

5. A recipient who has completed a period of enrollment in the Client Medical Management Program and who is subsequently found, through the procedures specified in § 2 D of this regulation, to have resumed abusive practices during the unrestricted period, shall again be restricted for 24 months.

F. Eligible providers.

1. A designated health care provider must be a physician enrolled as an individual practitioner unrestricted by DMAS.

2. A designated pharmacy provider must be a pharmacy enrolled as a community pharmacy unrestricted by DMAS.

3. Providers restricted through the Client Medical Management Program may not serve as designated providers, may not provide services through referral, and may not serve as covering providers for restricted recipients.

4. Physicians with practices limited to the delivery of emergency room services may not serve as designated primary providers.

5. Restricted recipients shall have reasonable access to all essential medical services. Other provider types such as clinics or ambulatory care centers may be established as designated providers as needed but only with the approval of DMAS.

G. Provider reimbursement for covered services.

1. DMAS shall reimburse for covered outpatient medical, pharmaceutical, and physician services only when they are provided by the designated providers, or by physicians seen on referral from the primary health care provider, or in a medical emergency. Prescriptions may be filled by a nondesignated pharmacy only in emergency situations when the designated pharmacy is closed, or when the designated pharmacy does not stock, or is unable to obtain the drug in a timely manner.

2. DMAS shall require a written referral from the primary health care provider for payment of covered outpatient services by nondesignated practitioners unless there is a medical emergency requiring immediate treatment.

H. Recipient eligibility cards.

DMAS shall provide an individual recipient eligibility

card listing the recipient's designated primary care providers for each restricted recipient.

I. Changes in designated providers.

1. DMAS must give prior authorization to all changes of designated providers.

2. The recipient or the designated provider may initiate requests for change for the following reasons:

a. Relocation of the recipient or provider.

b. Inability of the provider to meet the routine health needs of the recipient.

c. Breakdown of the recipient/provider relationship.

3. If the designated provider initiates the request and the recipient does not select a new provider by established deadlines, DMAS shall select a provider, subject to concurrence from the provider.

4. If DMAS denies the recipient's request, the recipient shall be notified in writing and given the right to appeal the decision. (See § 2 K.)

J. Review of recipient restriction status.

1. DMAS shall review a recipient's utilization prior to the end of the restriction period to determine restriction termination or continuation. (See § 2 D.) DMAS shall extend utilization control restrictions for 18 months if any of the following conditions is identified:

a. The recipient's utilization patterns include one or more conditions listed in § 2 D 3.

b. The recipient has not complied with Client Medical Management Program procedures resulting in services or medications received from one or more nondesignated providers without a written referral or in the absence of a medical emergency.

c. One or more of the designated providers recommends continued restriction status because the recipient has demonstrated noncompliant behavior which is being controlled by Client Medical Management Program restrictions.

d. Any changes of designated provider have been made due to the breakdown of the recipient/provider relationship as a result of the recipient's noncompliance.

2. DMAS shall notify the recipient and designated provider in writing of the review decision. If restrictions are continued, written notice shall include the recipient's right to appeal the proposed action. (See § 2 K.)

3. DMAS shall not implement the continued recipient restriction if a valid appeal is noted.

K. Recipient appeals.

1. Recipients shall have the right to appeal any adverse action taken by DMAS under these regulations.

2. Recipient appeals shall be held pursuant to the provisions of VR 460-04-8.7, Client Appeals.

§ 3. Client Medical Management Program for providers.

A. Purpose.

The Client Medical Management Program is a utilization control program designed to promote improved and cost efficient medical management of essential health care.

B. Authority.

1. Federal regulations at 42 CFR § 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program.

2. Federal regulations at 42 CFR § 431.54 (f) allow states to restrict providers' participation in the Medicaid program if the agency finds that the provider of items or services under the State Plan has provided items or services at a frequency or amount not medically necessary in accordance with utilization guidelines established by the state, or has provided items or services of a quality that do not meet professionally recognized standards of health care.

C. Identification of Client Medical Management Program participants.

DMAS shall identify providers for review through computerized reports such as but not limited to Provider SURS or by referrals from agencies, health care professionals, or other individuals.

D. Provider evaluation for restriction.

1. DMAS shall review providers to determine if health care services are being provided at a frequency or amount that is not medically necessary or that are not of a quality to meet professionally recognized standards of health care. Evaluation of utilization patterns can include but is not limited to review by the department staff of medical records or computerized reports generated by the department reflecting claims submitted for physician visits, drugs/prescriptions, outpatient and emergency room visits, lab or diagnostic procedures, hospital admissions, and referrals.

2. DMAS may restrict providers if any one or more of the following conditions is identified. These conditions

include but shall not be limited to the following:

a. Visits billed at a frequency or level exceeding that which is medically necessary;

b. Diagnostic tests billed in excess of what is medically necessary;

c. Diagnostic tests billed which are unrelated to the diagnosis;

d. Medications prescribed or prescriptions dispensed in excess of recommended dosages;

e. Medications prescribed or prescriptions dispensed unrelated to the diagnosis.

f. If the provider's license to practice in any state has been revoked or suspended.

E. Provider restriction procedures.

1. DMAS shall advise affected providers by written notice of the proposed restriction under the Client Medical Management Program. Written notice shall include an explanation of the basis for the decision, request for additional documentation, if any, and notification of the provider's right to appeal the proposed action.

2. DMAS shall restrict providers from being the designated provider, a referral provider, or a covering provider, for recipients in the Client Medical Management Program for 18 months.

3. DMAS shall not implement provider restriction if a valid appeal is noted.

F. Review of provider restriction status.

1. DMAS shall review a restricted provider's claims history record prior to the end of the restriction period to determine restriction termination or continuation (See § 3 D). DMAS shall extend provider restriction for 18 months in one or more of the following situations:

a. Where abuse by the provider is identified.

b. Where the practices which led to restriction continue.

2. In cases where the provider has submitted an insufficient number of claims during the restriction period to enable DMAS to conduct a claims history review, DMAS shall continue restriction until a reviewable six-months claims history is available for evaluation.

3. If DMAS renews restriction following the review, the provider shall be notified of the agency's proposed action, the basis for the action, and appeal rights. (See § 3 E).

4. If the provider continues a pattern of inappropriate health care services, DMAS may make a referral to the appropriate peer review group or regulatory agency for recommendation and action as appropriate.

G. Provider appeals.

1. Providers shall have the right to appeal any adverse action taken by the department under these regulations.

2. Provider appeals shall be held pursuant to the provisions of § 9-6.14:11 et seq. of the Code of Virginia (Administrative Process Act).

DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: **VR 485-10-9001. Commercial Driver Training School Regulations. REPEALED.**

Title of Regulation: **VR 485-60-9201. Commercial Driver Training School Regulations.**

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia

Effective Date: December 16, 1992

Summary:

Pursuant to § 46.2-1703 of the Code of Virginia, the Commissioner of the Department of Motor Vehicles intends to repeal existing regulations (VR 485-10-9001) and adopt new regulations pertaining to commercial driver training schools.

The adopted regulations establish the licensing and regulatory provisions for commercial driver training schools and instructors. These regulations may affect any person, group or organization involved or associated with commercial driver training school instruction.

The regulations address a number of issues that have not previously been clear to the licensee, such as local business license and zoning compliance, record keeping, and equipment requirements. These revisions also clarify the administrative and regulatory responsibility for DMV. Specifically, the provisions include school or instructor license revocation for DUI, reckless driving, sexual assault convictions, etc.

VR 485-60-9201. Commercial Driving Training School Regulations.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise:

"Class A licensee" means a school which provides occupational training in the operation of tractor-trailer or motor vehicles in excess of 20,000 pounds, exclusive of any load.

"Class B licensee" means a school which provides training in the operation of any type of motor vehicle other than those included in Class A licensure.

"Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically or both, to operate or drive motor vehicles, and charging a consideration or tuition for such services. "Commercial driver training school" or "school" does not mean any college, university, school established pursuant to § 46.2-1314 of the Code of Virginia, school maintained or classes conducted by employers for their own employees where no fee or tuition is charged, schools or classes owned and operated by or under the authority of bonafide religious institutions, or by the Commonwealth or any political subdivision thereof, or schools accredited by accrediting associations approved by the Department of Education.

"Commissioner" means the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Department" means the Department of Motor Vehicles (DMV) of the Commonwealth.

"Instructor" means any person, whether acting for himself as operator of a commercial driver training school or for such school for compensation, who teaches, conducts class, gives demonstrations, or supervises persons learning to operate or drive a motor vehicle.

PART II.
ENTRY REQUIREMENTS.

§ 2.1. School requirements.

A. Schools seeking a license shall file a completed copy of an application for a commercial driver training school license.

B. Schools seeking a license shall file with the Department of Motor Vehicles (DMV) evidence of insurance on all of its vehicles with a company [~~licensed~~ authorized] to do business in the Commonwealth of Virginia, in the minimum amounts as required by § 46.2-472 of the Code of Virginia. The policy shall include uninsured motorist coverage.

The school shall provide and maintain evidence of insurance coverage on a Certificate of Insurance or similar form with the department. The certificate shall be filed upon [~~initial~~ application and at other times of the licensure period [~~which is on or before the expiration of any previous certificate~~ as requested by the department] . The certificate shall stipulate the specific motor vehicles covered and that the department will be notified by the insurance carrier 10 days before the policy expires or if the policy is canceled or not maintained in full force.

Each school shall provide written notice to the commercial driver training school section of the DMV in the event that any motor vehicle is added or deleted from the insurance policy during the coverage period. The notice shall include the make, model, year, vehicle identification number and the license plate number. The notice shall be received by DMV prior to using such motor vehicle for driver education instruction.

C. The owner or manager of a commercial driver training school shall submit with their application a criminal background check provided by their local law-enforcement agency. The DMV may refuse to approve any application in which the owner or manager has been convicted of a felony, including but not limited to bribery, forgery, fraud or embezzlement under the laws of the Commonwealth or any other state or under the laws of the United States of America or a conviction of any offense included in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia (Criminal Sexual Assault) or of any similar laws of any other state or of the United States.

D. To avoid any conflict of interest, DMV shall not approve any Class A school license for any applicant that is certified by DMV as a Third Party Tester for the commercial driver's license (CDL) skills testing.

E. The location of a school's place of business or classroom and practice driver training area shall be a distance of at least 1500 feet from any property owned, leased or maintained by DMV for examining motor vehicle operators. Such distance shall be measured along the public streets by the nearest route from the commercial driver training school place of business or classroom. This section shall not apply to school locations that were licensed on or before [~~October 1, 1992~~ January 1, 1993].

[F.] No school, instructor or representative of a school shall knowingly use, or permit its instructors to use, any DMV driving test routes or sites for driver licensing skills examinations for the purpose of instructions or practice during the normal business hours of the DMV branch office. No school, instructor or representative of a school shall park any school vehicle on DMV owned, leased or maintained property after regular business hours without written approval from the branch office manager.

[~~F. No school shall provide behind-the-wheel instruction to any student holding an instruction permit until such~~

~~student has received at least two hours of classroom instruction. This requirement may be waived by the school in the event that the student provides documentation showing that they have previously held a permanent driver's license.~~]

G. The fee for a school license is $100 per year. The license shall expire on the last day of the 12th month succeeding the date that the license was issued. Commercial driver training schools may elect to secure a two-year license for $200 which shall expire the last day of the 24th month succeeding the date that the license was issued. At the discretion of the commissioner fees may be prorated. All fees are nonrefundable.

H. Any school applying to provide a motorcycle driver training course shall be considered in accordance with §§ 46.2-1188 through 46.2-1192 and the Regulations pertaining to the Motorcycle Rider Safety Training Center Program.

I. All schools licensed to conduct commercial driver training school business shall file with the Department of Motor Vehicles a surety bond in the sum of $100,000 for a Class A license and $5,000 for a Class B license, payable to the Commonwealth of Virginia, issued by a corporation licensed to transact surety business in the Commonwealth. The surety bond shall be filed with each application and must provide coverage for the entire licensure period.

J. The application fee, certificate of insurance, the surety bond and background check(s) must accompany the application. If applicable, the application package shall also include a copy of a notarized statement pertaining to oral contracts as provided under § 2.4 E of these regulations. All proper applications will be either approved or denied within 30 days of receipt.

K. The application package should be submitted to the Commercial Driver Training School section [~~*of the Department of Motor Vehicles, Post Office Box 27412, Richmond, Virginia 23269-0001*~~ *at the address shown on the application*].

[*L. There will be a $25 processing fee to process a request to upgrade a school license during the licensure period in order to be certified to teach students under 19 years of age as provided in § 2.7 of these regulations. The expiration on any upgraded license issued shall be the same as the current license.*]

§ 2.2. Place of business.

A. No license shall be issued to any school unless an established place of business is maintained within the Commonwealth which is owned or leased by a principal, where a substantial portion of the business is routinely conducted and which:

1. Satisfies all local business licensing and zoning regulations;

2. Has office space devoted exclusively to the commercial driver training school;

3. Houses all records that are required under the provisions of these regulations;

4. Is equipped with a desk, chairs, filing space, a working telephone listed in the name of the school and working utilities;

5. Has [~~*adequate*~~] *restroom facilities; and*

6. Complies with federal, state and local health, fire and building code requirements.

In the event that a post office box number is used for postal delivery, the school shall also provide the street address or physical address of the established place of business.

Any commercial driver training school licensed at their current site on or before [~~*October 1, 1992*~~ *January 1, 1993*] *, shall be considered to be in compliance with the provisions of §§ 2.2 A and 2.2 A 2.*

B. Each commercial driver training school [~~*licensed to teach students*~~ *that engages in classroom instruction*] *shall maintain, in addition to space for business operations, a classroom. Any such classroom shall provide a minimum of 10 square feet per student attending at a given time.*

The classrooms used for teaching students shall be equipped as follows:

1. Seating arrangements and writing surfaces for each student;

2. [~~*Adequate blackboard(s)*~~ *Writing surfaces*] *which shall be visible from all seating positions;*

3. A library of driver education reference books, including appropriate text books for each student;

4. Appropriate audio/video equipment and screen;

5. [~~Adequate~~] *Restroom facilities; and*

6. Compliance with federal, state and local health, fire and building code requirements.

Any school licensed at their current site on or before [~~*October 1, 1992*~~ *January 1, 1993*], *shall be considered to be in compliance with the provisions of subdivisions 1 through 5 of § 2.2 B.*

In addition to the established place of business address, all addresses or physical locations of classrooms, driving range facilities or any other facility used by the school shall be provided to DMV in writing.

C. Each school business office shall be open to the

general public a minimum of eight hours per week. Such hours shall be posted in a conspicuous location at the place of business.

D. The current schedule of fees and charges shall be prominently posted at the established place of business.

E. The school license shall be prominently posted at the established place of business.

F. Each school licensed by the department must notify DMV, in writing, 30 days prior to a change of address. The school shall return the current license to DMV so that a revised license may be issued. There is a $3.00 processing fee for a change of address.

[~~G. There will be a $25 processing fee to process a request to upgrade a school license during the licensure period in order to be certified to teach students under 19 years of age as provided in § 2.7 of these regulations. The expiration on any upgraded license issued shall be the same as the current license.~~]

§ 2.3. Nature of business records to be maintained.

The following records shall be maintained by each licensed school:

1. A record of each student showing name, address, telephone number, driver's or permit license number, dates of instruction, fees paid, name of the instructor providing instruction, testing materials or records, a copy of the Commercial Driver Education Certificate and, if applicable, a copy of the contract;

2. The records for students under 19 must distinguish the number of periods of classroom instruction, the number of periods of behind-the-wheel driving and the number of periods of behind-the-wheel observation. Such record shall also indicate the names of any other student(s) in the vehicle completing the required observation instruction;

3. It shall be the responsibility of the commercial driver training school to determine the successful completion of any student under 19 years of age in the theoretical and practical driving instruction by means of established, written performance measurements of the student's theoretical and practical skills knowledge. The results of such measurements shall be maintained with each respective student's records.

Schools shall issue within five working days of the final lesson [~~all appropriate documentation~~ any documentation needed to obtain a driver's license, verification for insurance companies or for employment purposes] to any student upon successful completion of the instruction requirements [, except when full tuition has not been satisfied].

All schools teaching students under 19 years of age may provide additional instruction to students in order to bring their skills up to a passing level. Any fees associated with such additional instruction shall be posted as provided in [§ ~~3.1 I 2~~ 2.2 D] of these regulations or referenced in the oral or written contract;

4. Copies of all insurance policies, surety bonds, local business license and any necessary zoning documentation; and

5. A personnel file on each instructor. The file shall include the instructor's name, address, driver's license number, commercial driver training school instructor number and [~~, as required,~~] a copy of the college transcript as required under § 3.1 [~~I~~ H] 2 of these regulations or a valid Virginia teaching license.

§ 2.4. Driver training school contracts.

A. All written contracts or agreements between any Class B school and any individual or group for the sale, purchase, barter or exchange of any driving instruction or any classroom instruction, or the preparation of an applicant for an examination given by the DMV for a driver's license or instruction permit must contain the following:

1. Any school certified to teach students under 19 years of age must include a statement indicating the [~~specific~~ minimum] number of periods of classroom instruction that is required for any student under 19 years;

2. Any school certified to teach students under 19 years of age must include a statement indicating the [~~specific~~ minimum] number of periods of behind-the-wheel instruction that is required for any student under 18 years of age;

3. A statement indicating the contract price per period, lesson or as a package, and the terms of the payment;

4. A statement disclosing if there is an additional charge for the use of the school vehicle in taking a driving test to obtain a driver's license from DMV;

5. A statement indicating the specific date and time when instruction is to begin for students taking classroom instruction; [~~and~~]

6. Licensees shall include a statement that the attendance at a commercial driver training school is not required for students over 19 years of age in order to secure a driver's license;

7. The name and address of the school and the name and address of the student; and

8. All contracts shall be signed by a school representative and the student. In addition, any contract between a Class B commercial driver training school with a student under 18 years of age shall be signed by a parent or legal guardian.

B. All contracts for services offered by a Class A commercial driver training school shall be in writing.

The written contract by a Class A licensee shall include the provisions of subdivisions 3, 4, 5, 7 and 8 of § 2.4 A of these regulations.

C. Notwithstanding the language of the contract, a refund of any fees or tuition or any part of fees or tuition must be provided upon request unless the school is capable or willing to perform its part of the contract within a reasonable time period.

D. All written contracts shall state that the instruction provided does not guarantee that any student will pass the state license examination or that the student can secure a license, or that the student will be guaranteed employment upon completion of any course instruction.

E. If there is no written contract by a Class B school, the school shall provide the student or their legal guardian a written notice containing information regarding the provisions of subdivisions 1 through 6 of § 2.4 A, § 2.4 C and § 2.4 D and shall file with DMV a notarized, written statement indicating that the school is providing such notice and that all of the school's oral contracts and agreements have complied, and will comply, with the these subdivisions and subsections. Such statement shall be filed at the time of initial application and with subsequent renewal applications.

§ 2.5. Notice required to DMV.

A. Each school shall notify the commercial driver training school section of DMV in writing no later than the 15th of the month, following the month of termination of employment of any licensed instructor. The school shall also [make every reasonable attempt to] return to DMV such instructor's license.

B. In the event of cessation of business, the commercial driver training school shall submit to the commercial driver training school section of DMV, within 15 days of such date, a written statement explaining the reason for closing, the school license, all instructors' licenses and the past six months of students' records.

§ 2.6. Availability of records.

A. All records shall be kept at the established place of business for a period of at least three years.

B. All [school] records as provided in § 2.3 of these regulations shall be open and available for inspection by any officer or employee of DMV or any law-enforcement officer during normal business hours. In the event that copies of such records are not readily available, DMV may secure and remove, for a period of three business days, these records for the purpose of photocopying.

§ 2.7. Certification to teach students under 19 years of age.

A. All schools teaching students under 19 years of age for purposes of securing a driver's license or instruction permit under the provisions of §§ 46.2-323, 46.2-334 and 46.2-335 of the Code of Virginia are required to offer a course that is of comparable content and quality to that offered in the public schools. Schools certified by DMV to teach students under 19 years of age shall comply with the classroom and behind-the-wheel instructional standards established by the Department of Education through the Curriculum Guide for Driver Education in Virginia which is incorporated by reference in these regulations.

B. All schools certified to teach students under 19 years of age shall employ at least one instructor that is certified under the requirements set out in § 3.1 [~~I~~ H] of these regulations.

[§ 2.8. Curriculum for students under 19 years of age.]

~~*C. The minimum hours of instruction for students under 18 years of age shall comply with the provisions of the Curriculum Guide for Driver Education in Virginia.*~~

[A.] The minimum hours of instruction for students [~~between 18 and~~ under] 19 years of age shall comply with the provisions of the Curriculum Guide for Driver Education in Virginia.

[~~D.~~ B.] The course shall include specific information regarding the influence of alcohol and drugs as they relate to driving a motor vehicle.

[~~E.~~ C.] The course shall include specific attention to the laws of the Commonwealth regarding safety belt use. The instruction shall consist of information on basic safety belt use, passive restraint systems, automatic shoulder harness systems with manual lap belts and child safety seats.

[~~F.~~ D.] For purposes of teaching behind-the-wheel instruction to students under 18 years of age, the number of persons in a vehicle during behind-the-wheel instruction shall be limited to no more than four, including the driver and the instructor, or the maximum passenger capacity of the vehicle (i.e., the number of safety belts), whichever is smaller.

[§ ~~2.8.~~ § 2.9.] Class A license curriculum.

A. All schools issued a Class A license shall provide theoretical and practical instruction in the operation of tractor-trailers or motor vehicles in excess of 20,000 pounds, exclusive of any load.

B. The theoretical instruction shall include, but need not be limited to, the following areas:

1. State motor vehicle laws;

2. Virginia Motor Carrier Act;

3. Federal Motor Carrier Safety rules and regulations relating to the operation of trucks, commercial tractors, trailers, and semi-trailers, and motor vehicles transporting flammable or hazardous cargo;

4. Special stops required (e.g., railroad crossings);

5. Virginia laws relating to equipment, brake systems, lightings, and display of emergency equipment;

6. Registration and licensing laws;

7. Special taxes;

8. Accident reporting and safety responsibility laws;

9. Safe and courteous driving practices;

10. Routine service and pretrip safety check;

11. Use of occupant protection devices, including their benefits and effectiveness in motor vehicle collisions.

C. Not more than 30% of the total classroom hours may be devoted to the showing of slides or films.

D. The practical instruction shall include, but need not be limited to, the following areas:

1. Starting;

2. Stopping;

3. Turning;

4. Braking;

5. Parking;

6. Docking;

7. Hooking-up and unhooking trailers and semi-trailers;

8. Display of emergency equipment;

9. Use of hazard lighting system;

10. Checking and servicing all the component parts of such vehicles;

11. Pretrip inspection.

E. For the purposes of behind-the-wheel instruction by a Class A licensee, there may be no more than five persons, including the driver and instructor in the passenger portion of the vehicle.

[§ ~~2.9.~~ § 2.10.] Equipment.

A. Every school shall provide all necessary equipment and materials required for classroom and behind-the-wheel instruction, including motor vehicles that are in safe mechanical condition.

B. Each vehicle used for driver education in a school with a Class B license shall have dual controls consisting of dual brakes, dual inside rearview mirror, dual clutch (if it has standard transmission) and right and left-hand outside mirrors. Any training vehicle(s) used for Class B license instruction shall not be more than eight model years old.

C. In addition to equipment required by the Motor Carrier Safety rules and regulations, each vehicle used for driver education in a school with a Class A license shall have dual braking capability. The cab of such vehicle shall be designed to have safety belts for each individual in the tractor-trailer.

D. All passenger vehicles shall be marked by a rooftop sign in bold letters not less than two [and one-half] inches in height, clearly visible 100 feet from both the front and rear, stating "Student Driver," "Learner," "New Driver," or "Caution - Student" when engaged in driver education [or when the vehicle is being used for testing purposes] . All vehicles used for driver instruction in a school with a Class A license shall have similar signs with letters of not less than four inches affixed to the rear, sides and front of the vehicle.

All passenger vehicles and vehicles used in a school with a Class A license shall display the name of the school as shown on the license on the outside of the vehicle when engaged in driver education [or when the vehicle is being used for testing purposes]. For passenger vehicles, the name of the school [~~may~~ shall] be included on the rooftop sign or it may be affixed to both sides of the vehicle.

E. The Department of Motor Vehicles may exempt any school teaching disabled individuals from the requirement to provide motor vehicles, on a case-by-case basis. The school may use the student's vehicle for their behind-the-wheel instruction in the event that it is cost prohibitive for the school to maintain certain specialized equipment or if such equipment is not readily installed and removed or if it provides necessary practical experience for the student in their own vehicle. When using a student's vehicle, the school shall photocopy the current insurance policy covering such vehicle and maintain with the student's file. The school shall also send a written notice to the commercial driver training school section for the DMV stipulating the reasons for using the student's vehicle and the anticipated dates of instruction as well as a copy of the insurance policy prior to beginning

instruction.

Any school that uses a disabled student's motor vehicle must ensure that the vehicle is equipped with a dual brake and such vehicle is required to utilize a rooftop sign as specified under subsection D of this section.

F. No motor vehicle may be used for driver education unless it displays a current and valid Virginia safety inspection sticker or, alternatively, in the case of vehicles over 20,000 pounds, has a valid Federal Highway Administration inspection.

G. No motor vehicle may be used for commercial driver education unless it is owned or leased in the name of a commercial driver training school licensed by DMV or the school owner as indicated on the application for the commercial driver training school license, except as provided in subsection [~~E~~ F] of this section.

H. Any motor vehicle used by a commercial driver training school for the purposes of providing behind-the-wheel instruction or used for the purposes of taking the DMV skills examination shall contain a current and valid registration in the vehicle.

I. All schools that rent their motor vehicles to individuals that are not bonafide students for purposes of taking the driving examination at the Department of Motor Vehicles shall comply with the rentors' certificate of registration as set out in § 58.1-2400 et seq. of the Code of Virginia.

[~~§ 2.10.~~ § 2.11] Advertising, guarantees, soliciting business, name.

A. A school shall not use any name other than that shown on its license.

B. Any school that utilizes "Department of Motor Vehicles" [or DMV] in any form of advertising including but not limited to telephone directories shall use only the words "Licensed by the Department of Motor Vehicles [(or DMV)] of the Commonwealth of Virginia."

C. Schools shall not use false, deceptive or misleading information in any advertisement.

D. No school, instructor or representative of a school shall assert or imply that it will guarantee that any student will pass the state license examination or that the student can secure a license, or that the student will be guaranteed employment upon completion of any course of instruction.

E. No school, instructor or representative of a school shall transact or solicit driver training school business on property owned, rented or maintained by the Department of Motor Vehicles.

F. No school, instructor, or representative of a school shall provide translation services for the purposes of any individual who is taking the DMV written examination.

[~~§ 2.11.~~ § 2.12.] School license renewal required.

A. The department will make every effort to mail a renewal notice to the licensee outlining the procedures for renewal at least 45 days prior to the expiration of their license. Failure to receive this notice shall not relieve the licensee of the obligation to renew.

B. Each licensed school applying for renewal shall return the renewal application, certificate of insurance, surety bond, background check(s) and fee of $100 for a one-year license or $200 for a two-year license to the [~~Department of Motor Vehicles,~~] Commercial Driver Training [~~Schools~~ School] section [~~, Post Office Box 27412, 2300 West Broad Street, Richmond, Virginia 23269-0001,~~ at the address shown on the application] on or before the 15th day of the month in which the current license expires. If applicable, the package shall also include a copy of a notarized statement pertaining to oral contracts as provided under § 2.4 E of these regulations.

C. No school will be permitted to continue operation upon the expiration of its license. In the event that a school fails to apply for renewal of the school license within 30 days following the expiration date, a penalty of $100 shall be assessed in addition to the renewal fee. This penalty provision shall apply for the duration of the current licensure period.

[~~§ 2.12.~~ 2.13.] School licenses not transferable.

A. A change in ownership requires an application for an original license along with the documents and fees required under § 2.1 J of these regulations to be submitted to DMV at least 30 days in advance of the effective date of the change. The school shall not operate under the new or different individual, association, partnership or corporation until and unless an original license has been issued reflecting the change.

B. Commercial driver training school licenses shall not be sold, loaned, bartered or given by a licensee or an agent of a licensee to another individual, association, partnership or corporation.

PART III.
INSTRUCTOR LICENSING.

§ 3.1. Instructor requirements.

A. Instructors seeking a license shall file a completed application for a commercial driver training school instructor.

B. Instructors seeking a license shall be employed by a licensed school. No instructor shall be employed by more than one school, unless the schools are owned by the same person. Instructors employed by more than one school will

B. The theoretical instruction shall include, but need not be limited to, the following areas:

1. State motor vehicle laws;

2. Virginia Motor Carrier Act;

3. Federal Motor Carrier Safety rules and regulations relating to the operation of trucks, commercial tractors, trailers, and semi-trailers, and motor vehicles transporting flammable or hazardous cargo;

4. Special stops required (e.g., railroad crossings);

5. Virginia laws relating to equipment, brake systems, lightings, and display of emergency equipment;

6. Registration and licensing laws;

7. Special taxes;

8. Accident reporting and safety responsibility laws;

9. Safe and courteous driving practices;

10. Routine service and pretrip safety check;

11. Use of occupant protection devices, including their benefits and effectiveness in motor vehicle collisions.

C. Not more than 30% of the total classroom hours may be devoted to the showing of slides or films.

D. The practical instruction shall include, but need not be limited to, the following areas:

1. Starting;

2. Stopping;

3. Turning;

4. Braking;

5. Parking;

6. Docking;

7. Hooking-up and unhooking trailers and semi-trailers;

8. Display of emergency equipment;

9. Use of hazard lighting system;

10. Checking and servicing all the component parts of such vehicles;

11. Pretrip inspection.

E. For the purposes of behind-the-wheel instruction by a Class A licensee, there may be no more than five persons, including the driver and instructor in the passenger portion of the vehicle.

[§ ~~2.9.~~ § 2.10.] Equipment.

A. Every school shall provide all necessary equipment and materials required for classroom and behind-the-wheel instruction, including motor vehicles that are in safe mechanical condition.

B. Each vehicle used for driver education in a school with a Class B license shall have dual controls consisting of dual brakes, dual inside rearview mirror, dual clutch (if it has standard transmission) and right and left-hand outside mirrors. Any training vehicle(s) used for Class B license instruction shall not be more than eight model years old.

C. In addition to equipment required by the Motor Carrier Safety rules and regulations, each vehicle used for driver education in a school with a Class A license shall have dual braking capability. The cab of such vehicle shall be designed to have safety belts for each individual in the tractor-trailer.

D. All passenger vehicles shall be marked by a rooftop sign in bold letters not less than two [and one-half] inches in height, clearly visible 100 feet from both the front and rear, stating "Student Driver," "Learner," "New Driver," or "Caution - Student" when engaged in driver education [or when the vehicle is being used for testing purposes] . All vehicles used for driver instruction in a school with a Class A license shall have similar signs with letters of not less than four inches affixed to the rear, sides and front of the vehicle.

All passenger vehicles and vehicles used in a school with a Class A license shall display the name of the school as shown on the license on the outside of the vehicle when engaged in driver education [or when the vehicle is being used for testing purposes]. For passenger vehicles, the name of the school [~~may~~ shall] be included on the rooftop sign or it may be affixed to both sides of the vehicle.

E. The Department of Motor Vehicles may exempt any school teaching disabled individuals from the requirement to provide motor vehicles, on a case-by-case basis. The school may use the student's vehicle for their behind-the-wheel instruction in the event that it is cost prohibitive for the school to maintain certain specialized equipment or if such equipment is not readily installed and removed or if it provides necessary practical experience for the student in their own vehicle. When using a student's vehicle, the school shall photocopy the current insurance policy covering such vehicle and maintain with the student's file. The school shall also send a written notice to the commercial driver training school section for the DMV stipulating the reasons for using the student's vehicle and the anticipated dates of instruction as well as a copy of the insurance policy prior to beginning

instruction.

Any school that uses a disabled student's motor vehicle must ensure that the vehicle is equipped with a dual brake and such vehicle is required to utilize a rooftop sign as specified under subsection D of this section.

F. No motor vehicle may be used for driver education unless it displays a current and valid Virginia safety inspection sticker or, alternatively, in the case of vehicles over 20,000 pounds, has a valid Federal Highway Administration inspection.

G. No motor vehicle may be used for commercial driver education unless it is owned or leased in the name of a commercial driver training school licensed by DMV or the school owner as indicated on the application for the commercial driver training school license, except as provided in subsection [~~E~~ F] of this section.

H. Any motor vehicle used by a commercial driver training school for the purposes of providing behind-the-wheel instruction or used for the purposes of taking the DMV skills examination shall contain a current and valid registration in the vehicle.

I. All schools that rent their motor vehicles to individuals that are not bonafide students for purposes of taking the driving examination at the Department of Motor Vehicles shall comply with the rentors' certificate of registration as set out in § 58.1-2400 et seq. of the Code of Virginia.

[§ ~~2.10.~~ § 2.11] Advertising, guarantees, soliciting business, name.

A. A school shall not use any name other than that shown on its license.

B. Any school that utilizes "Department of Motor Vehicles" [or DMV] in any form of advertising including but not limited to telephone directories shall use only the words "Licensed by the Department of Motor Vehicles [(or DMV)] of the Commonwealth of Virginia."

C. Schools shall not use false, deceptive or misleading information in any advertisement.

D. No school, instructor or representative of a school shall assert or imply that it will guarantee that any student will pass the state license examination or that the student can secure a license, or that the student will be guaranteed employment upon completion of any course of instruction.

E. No school, instructor or representative of a school shall transact or solicit driver training school business on property owned, rented or maintained by the Department of Motor Vehicles.

F. No school, instructor, or representative of a school shall provide translation services for the purposes of any individual who is taking the DMV written examination.

[§ ~~2.11.~~ § 2.12.] School license renewal required.

A. The department will make every effort to mail a renewal notice to the licensee outlining the procedures for renewal at least 45 days prior to the expiration of their license. Failure to receive this notice shall not relieve the licensee of the obligation to renew.

B. Each licensed school applying for renewal shall return the renewal application, certificate of insurance, surety bond, background check(s) and fee of $100 for a one-year license or $200 for a two-year license to the [~~Department of Motor Vehicles,~~] Commercial Driver Training [~~Schools~~ School] section [~~, Post Office Box 27412, 2300 West Broad Street, Richmond, Virginia 23269-0001,~~ at the address shown on the application] on or before the 15th day of the month in which the current license expires. If applicable, the package shall also include a copy of a notarized statement pertaining to oral contracts as provided under § 2.4 E of these regulations.

C. No school will be permitted to continue operation upon the expiration of its license. In the event that a school fails to apply for renewal of the school license within 30 days following the expiration date, a penalty of $100 shall be assessed in addition to the renewal fee. This penalty provision shall apply for the duration of the current licensure period.

[§ ~~2.12.~~ 2.13.] School licenses not transferable.

A. A change in ownership requires an application for an original license along with the documents and fees required under § 2.1 J of these regulations to be submitted to DMV at least 30 days in advance of the effective date of the change. The school shall not operate under the new or different individual, association, partnership or corporation until and unless an original license has been issued reflecting the change.

B. Commercial driver training school licenses shall not be sold, loaned, bartered or given by a licensee or an agent of a licensee to another individual, association, partnership or corporation.

PART III.
INSTRUCTOR LICENSING.

§ 3.1. Instructor requirements.

A. Instructors seeking a license shall file a completed application for a commercial driver training school instructor.

B. Instructors seeking a license shall be employed by a licensed school. No instructor shall be employed by more than one school, unless the schools are owned by the same person. Instructors employed by more than one school will

B. The theoretical instruction shall include, but need not be limited to, the following areas:

1. State motor vehicle laws;

2. Virginia Motor Carrier Act;

3. Federal Motor Carrier Safety rules and regulations relating to the operation of trucks, commercial tractors, trailers, and semi-trailers, and motor vehicles transporting flammable or hazardous cargo;

4. Special stops required (e.g., railroad crossings);

5. Virginia laws relating to equipment, brake systems, lightings, and display of emergency equipment;

6. Registration and licensing laws;

7. Special taxes;

8. Accident reporting and safety responsibility laws;

9. Safe and courteous driving practices;

10. Routine service and pretrip safety check;

11. Use of occupant protection devices, including their benefits and effectiveness in motor vehicle collisions.

C. Not more than 30% of the total classroom hours may be devoted to the showing of slides or films.

D. The practical instruction shall include, but need not be limited to, the following areas:

1. Starting;

2. Stopping;

3. Turning;

4. Braking;

5. Parking;

6. Docking;

7. Hooking-up and unhooking trailers and semi-trailers;

8. Display of emergency equipment;

9. Use of hazard lighting system;

10. Checking and servicing all the component parts of such vehicles;

11. Pretrip inspection.

E. For the purposes of behind-the-wheel instruction by a Class A licensee, there may be no more than five persons, including the driver and instructor in the passenger portion of the vehicle.

[§ ~~2.9.~~ § 2.10.] Equipment.

A. Every school shall provide all necessary equipment and materials required for classroom and behind-the-wheel instruction, including motor vehicles that are in safe mechanical condition.

B. Each vehicle used for driver education in a school with a Class B license shall have dual controls consisting of dual brakes, dual inside rearview mirror, dual clutch (if it has standard transmission) and right and left-hand outside mirrors. Any training vehicle(s) used for Class B license instruction shall not be more than eight model years old.

C. In addition to equipment required by the Motor Carrier Safety rules and regulations, each vehicle used for driver education in a school with a Class A license shall have dual braking capability. The cab of such vehicle shall be designed to have safety belts for each individual in the tractor-trailer.

D. All passenger vehicles shall be marked by a rooftop sign in bold letters not less than two [and one-half] inches in height, clearly visible 100 feet from both the front and rear, stating "Student Driver," "Learner," "New Driver," or "Caution - Student" when engaged in driver education [or when the vehicle is being used for testing purposes] . All vehicles used for driver instruction in a school with a Class A license shall have similar signs with letters of not less than four inches affixed to the rear, sides and front of the vehicle.

All passenger vehicles and vehicles used in a school with a Class A license shall display the name of the school as shown on the license on the outside of the vehicle when engaged in driver education [or when the vehicle is being used for testing purposes]. For passenger vehicles, the name of the school [~~may~~ shall] be included on the rooftop sign or it may be affixed to both sides of the vehicle.

E. The Department of Motor Vehicles may exempt any school teaching disabled individuals from the requirement to provide motor vehicles, on a case-by-case basis. The school may use the student's vehicle for their behind-the-wheel instruction in the event that it is cost prohibitive for the school to maintain certain specialized equipment or if such equipment is not readily installed and removed or if it provides necessary practical experience for the student in their own vehicle. When using a student's vehicle, the school shall photocopy the current insurance policy covering such vehicle and maintain with the student's file. The school shall also send a written notice to the commercial driver training school section for the DMV stipulating the reasons for using the student's vehicle and the anticipated dates of instruction as well as a copy of the insurance policy prior to beginning

instruction.

Any school that uses a disabled student's motor vehicle must ensure that the vehicle is equipped with a dual brake and such vehicle is required to utilize a rooftop sign as specified under subsection D of this section.

F. No motor vehicle may be used for driver education unless it displays a current and valid Virginia safety inspection sticker or, alternatively, in the case of vehicles over 20,000 pounds, has a valid Federal Highway Administration inspection.

G. No motor vehicle may be used for commercial driver education unless it is owned or leased in the name of a commercial driver training school licensed by DMV or the school owner as indicated on the application for the commercial driver training school license, except as provided in subsection [~~E~~ F] of this section.

H. Any motor vehicle used by a commercial driver training school for the purposes of providing behind-the-wheel instruction or used for the purposes of taking the DMV skills examination shall contain a current and valid registration in the vehicle.

I. All schools that rent their motor vehicles to individuals that are not bonafide students for purposes of taking the driving examination at the Department of Motor Vehicles shall comply with the rentors' certificate of registration as set out in § 58.1-2400 et seq. of the Code of Virginia.

[~~§ 2.10.~~ § 2.11] Advertising, guarantees, soliciting business, name.

A. A school shall not use any name other than that shown on its license.

B. Any school that utilizes "Department of Motor Vehicles" [or DMV] in any form of advertising including but not limited to telephone directories shall use only the words "Licensed by the Department of Motor Vehicles [(or DMV)] of the Commonwealth of Virginia."

C. Schools shall not use false, deceptive or misleading information in any advertisement.

D. No school, instructor or representative of a school shall assert or imply that it will guarantee that any student will pass the state license examination or that the student can secure a license, or that the student will be guaranteed employment upon completion of any course of instruction.

E. No school, instructor or representative of a school shall transact or solicit driver training school business on property owned, rented or maintained by the Department of Motor Vehicles.

F. No school, instructor, or representative of a school shall provide translation services for the purposes of any individual who is taking the DMV written examination.

[~~§ 2.11.~~ § 2.12.] School license renewal required.

A. The department will make every effort to mail a renewal notice to the licensee outlining the procedures for renewal at least 45 days prior to the expiration of their license. Failure to receive this notice shall not relieve the licensee of the obligation to renew.

B. Each licensed school applying for renewal shall return the renewal application, certificate of insurance, surety bond, background check(s) and fee of $100 for a one-year license or $200 for a two-year license to the [~~Department of Motor Vehicles,~~] Commercial Driver Training [~~Schools~~ School] section [~~, Post Office Box 27412, 2300 West Broad Street, Richmond, Virginia 23269-0001,~~ at the address shown on the application] on or before the 15th day of the month in which the current license expires. If applicable, the package shall also include a copy of a notarized statement pertaining to oral contracts as provided under § 2.4 E of these regulations.

C. No school will be permitted to continue operation upon the expiration of its license. In the event that a school fails to apply for renewal of the school license within 30 days following the expiration date, a penalty of $100 shall be assessed in addition to the renewal fee. This penalty provision shall apply for the duration of the current licensure period.

[~~§ 2.12.~~ 2.13.] School licenses not transferable.

A. A change in ownership requires an application for an original license along with the documents and fees required under § 2.1 J of these regulations to be submitted to DMV at least 30 days in advance of the effective date of the change. The school shall not operate under the new or different individual, association, partnership or corporation until and unless an original license has been issued reflecting the change.

B. Commercial driver training school licenses shall not be sold, loaned, bartered or given by a licensee or an agent of a licensee to another individual, association, partnership or corporation.

PART III.
INSTRUCTOR LICENSING.

§ 3.1. Instructor requirements.

A. Instructors seeking a license shall file a completed application for a commercial driver training school instructor.

B. Instructors seeking a license shall be employed by a licensed school. No instructor shall be employed by more than one school, unless the schools are owned by the same person. Instructors employed by more than one school will

be required to submit an application and appropriate fees for each school. Any instructor licensed on or before [~~October 1, 1992,~~ January 1, 1993,] at more than one school not owned by the same person shall be deemed in compliance with this section.

DMV will consider instructor application(s) filed simultaneously with an original school application.

C. Instructors seeking a license shall have at least five years driving experience, two years of which shall be experience in the United States or a territory thereof. In the event that an applicant uses documents from a foreign country to substantiate five years of driving experience, the records must exhibit the individual's name, the license number, the date of issue, the date of expiration and notation of any violations.

D. Instructors seeking a license to teach passenger vehicle instruction shall hold a valid driver's license from their state of domicile at the time of licensing and throughout the entire licensure period. Instructors seeking a license to teach at a school with a Class A license shall hold a valid commercial driver's license from their state of domicile at the time of licensing and throughout the licensure period. If such licenses are from another state, the licensee must provide a copy of their driving record from that jurisdiction upon application and on a quarterly basis.

E. Instructors seeking a license to teach at a school with a Class A or Class B license shall upon licensing and throughout the licensure period maintain a driving record not exceeding six demerit points. In the event that the driving record is from another state or foreign country the department will apply Virginia's equivalent demerit points. Furthermore, instructors seeking a license to teach at a Class A licensed school shall upon licensing and throughout the licensure period maintain a driving record with no more than one serious traffic violation as defined in § 46.2-341.20 of the Code of Virginia during the preceding three-year period.

F. Instructors seeking a license shall submit with their application a criminal background check provided by their local law-enforcement agency. The DMV may refuse to approve any application in which the instructor has been convicted of a felony, including but not limited to bribery, forgery, fraud or embezzlement under the laws of the Commonwealth or any other state or under the laws of the United States of America or a conviction of any offense included in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia (Criminal Sexual Assault) or of any similar laws of any other state or of the United States.

[~~G. Instructors seeking a license shall submit two photographs (black and white or color), 1-1/2 inches by 1-1/2 inches square or passport size showing neck, shoulders and uncovered head, taken not more than 30 days prior to such application. (Do not permanently attach photographs to any material.)~~]

[~~H.~~ G.] Instructor applicants shall not be issued a license if they have a conviction of driving under the influence (DUI), reckless driving, refusal to submit to a breath or blood test under § 18.2-268 of the Code of Virginia or vehicular homicide or of any similar ordinances of any county, city or town or of any other state within 18 months of the date of receipt of the application.

[~~I.~~ H.] In addition to other requirements, instructors seeking certification to teach students under 19 years of age shall:

1. Have at least a high school diploma or equivalent.

2. Submit, with their application, a certified copy of a transcript(s) from an accredited college or university showing successful completion of three semester hours of "Introduction to Driver Education: Driver Task Analysis" and three semester hours of "Instructional Principles of Teaching Driver Education" or similar such courses as approved by the Department of Education. In lieu of college transcripts, submission of a valid Virginia teaching license with a driver education endorsement may be acceptable.

3. Any instructor that has been certified as a paraprofessional by the Department of Education in the public school system may be certified to provide instruction to students under 19 years of age for behind-the-wheel instruction only. Such applicants shall be required to submit along with their application appropriate verification from the Virginia Department of Education.

[~~J.~~ I.] In addition to other requirements, instructors seeking certification to teach students over 19 years of age in Class B schools shall submit, with their application, a copy of a transcript from an accredited college or university showing successful completion of three semester hours of "Introduction to Driver Education: Driver Task Analysis." This provision shall not apply to any instructor who was licensed to teach students over 19 years of age on or before [~~October 1, 1992.~~ January 1, 1993.]

[~~This provision may be waived by DMV and a license issued if such instructor is seeking a license to work for a school which employs at least one instructor meeting this educational requirement and submission of proof of enrollment in such a college course. This waiver is valid for the duration of a one-year licensure period. In the event that the college course is canceled or has not concluded by the end of a year DMV may grant one subsequent waiver to the same individual.~~]

[~~K.~~ J.] The fee for an instructor license shall be $50 per year. The instructor's license period shall coincide with the expiration of the respective school license expiration. Instructors may elect to secure up to a

two-year license for $100. The expiration of any such license shall coincide and not exceed the respective school license expiration. At the discretion of the commissioner fees may be prorated on a monthly basis. All fees are nonrefundable.

[~~L.~~ K.] The application fee [; ~~photographs~~] and background check shall accompany the application. Any appropriate documentation for teaching students over or under 19 shall be submitted with the original application. Any instructor relying on a Virginia teaching license shall submit a valid copy of such license upon original application and upon renewal of the license. All proper applications will be either approved or denied within 30 days of receipt.

[~~M.~~ L.] The application package should be submitted to the Commercial Driver Training School Section [~~of the Department of Motor Vehicles, Post Office Box 27412, Richmond, Virginia 23269-0001~~ at the address shown on the application] .

[~~N.~~ M.] All licensed instructors shall have their instructor's license in their possession at all times while providing commercial driver training school instruction.

[~~O.~~ N.] Each school instructor licensed by the department shall notify the commercial driver training school section, in writing, within 30 days of moving to a new residential address.

[~~P.~~ O.] In the event that the school licensed by the department changes the school address, the instructor shall return the current license to DMV so that a revised license may be issued. There is a $3.00 processing fee for a change of address.

[~~Q.~~ P.] There will be a $10 processing fee to process a request to upgrade an instructor license during the licensure period in order to be certified to teach students under 19 years of age as provided in § 3.1 [~~I~~ H] of these regulations.

[~~R.~~ Q.] Instructors shall maintain their current residential address on their driver's license.

[~~S.~~ R.] Any instructor applying as a motorcycle instructor shall be considered in accordance with §§ 46.2-1188 through 46.2-1192 and the regulations pertaining to the Motorcycle Rider Safety Training Center Program.

§ 3.2. Instructor license renewal required.

A. The department will make every effort to mail a renewal notice outlining the procedures for renewal at least 45 days prior to the expiration of the license to the licensee at the established place of business. Failure to receive this notice shall not relieve the licensee of the obligation to renew.

B. Each licensed instructor applying for renewal shall return the renewal application, background check and fee of $50 for a one-year license or $100 for a two-year license to the [~~Department of Motor Vehicles,~~] Commercial Driver Training School section [~~Post Office Box 27412, 2300 West Broad Street, Richmond, Virginia 23269-0001~~ at the address shown on the application] on or before the 15th day of the month in which the current license expires. Each instructor's license will expire on [or before] the [~~same date as~~ expiration date of] the respective school license.

C. No instructor will be permitted to continue instructing students upon the expiration of their instructor's license. In the event that an instructor fails to apply for a renewal license within 30 days following the expiration date, a penalty fee of $50 shall be assessed in addition to the renewal fee. This penalty shall apply [~~through the duration of the current licensure period~~ for a period of 12 months after the expiration of the previous license] . DMV shall not issue a renewal instructor license in the event that the school license is not renewed or approved.

§ 3.3. Transfer of instructor license.

Commercial driver training school instructor licenses shall not be transferred from the current school to another school without the expressed written approval and relicensing by the DMV. All transfers shall be requested in writing by the instructor. Such instructors shall submit a completed application for a commercial driver training school instructor as well as other documents requested. There will be a $25 processing fee to transfer an instructor license from one school to another.

PART IV.
STANDARDS OF PRACTICE.

§ 4.1. Discipline.

A. The Department of Motor Vehicles may refuse to license a school or instructor and may cancel, suspend, revoke or refuse to renew a license and may impose a civil penalty for any licensee for any of the following:

1. Giving prospective students false, misleading, or fraudulent information relating to the school;

2. Failure to provide instruction within a reasonable period following enrollment in a driver education course;

3. Failure to provide a consumer, upon request, with information regarding the address and telephone number of the commercial driver training school section of DMV for purposes of filing a complaint on the school or an instructor;

4. Failure to comply with any provisions of these regulations;

5. Failure for a school or instructor licensed to teach

students under 19 years of age to comply with the teaching standards of the Curriculum Guide for Driver Education in Virginia;

6. Failure of a school to comply with written or oral driver training school contracts;

7. Contractual, oral or implied business practice of indicating that a student under 18 years of age has successfully completed classroom instruction on the condition that such student completes the behind-the-wheel instruction with that school or any school designated by such school;

8. Payment of any fee associated with commercial driver training school program by a personal or corporate check on an account with insufficient funds or on a closed account;

9. Providing translation services for any individual who is taking the DMV written examination;

10. Employing or otherwise engaging an instructor not properly licensed by the Department of Motor Vehicles;

11. Providing instruction in the operation of a type of vehicle which the instructor is not licensed to operate;

12. Failure of an instructor with an out-of-state driver's license or commercial drivers license to submit a copy of their driving record on or about February 15, May 15, August 15 and November 15 each year;

13. Exceeding the maximum allowance of violations on an instructor's driving record as provided in § 3.1 E of these regulations;

14. Failure to maintain driver education equipment in a safe condition;

15. Failure to equip motor vehicles with proper signage;

16. Not providing the minimum number of hours of classroom or behind-the-wheel instruction for students under 19 years of age;

17. Permitting more than one student 18 years of age or older in a passenger vehicle under his control while teaching driver education, except when the licensee is training driving instructors or providing instruction as a Class A licensee;

18. Falsification of information on the application, the college transcripts, the Virginia teaching license, surety bond, or of the insurance documentation;

19. Falsification of any form, certificate or document required for a student to obtain their driver's license or used in connection with teaching driver education;

20. Possession, use, sale or giving of any Department of Motor Vehicle test materials or test answers;

21. Assisting or facilitating the creation of false identification for individuals;

22. Violation or conviction of the owner, manager or instructor of a commercial driver training school of any felony, including but not limited to bribery, forgery, fraud or embezzlement under the laws of the Commonwealth of Virginia or any other state or the laws of the United States of America or of any offense included in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia (Criminal Sexual Assault) or of any similar laws of any other state or of the United States;

23. Upon conviction of refusal to submit to a breath or blood test as prescribed under § 18.2-268 of the Code of Virginia;

24. Violation or conviction of state or federal safety regulations or the laws of the Commonwealth including without limitation those of the Departments of Motor Vehicles, Education and State Police;

B. The commissioner may immediately suspend, revoke or refuse to renew a license based upon a finding that the instructor's driver's license or commercial driver's license has been suspended, revoked, or disqualified, or upon receiving a record of a conviction of serious motor vehicle related offenses punishable as a misdemeanor or felony including driving under the influence or reckless driving. In addition to other provisions of these regulations, the commissioner may immediately suspend, revoke or refuse to renew license of an instructor based upon a finding of a conviction of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 of the Code of Virginia (Criminal Sexual Assault) or any similar laws of any other state or of the United States.

C. The department may, in addition to other provisions, assess a civil penalty not to exceed $1,000 for each violation or any provision of the laws or regulations related to commercial driver training schools.

D. For the purposes of § 4.1 of these regulations, if a school licensee is an individual, association, partnership or corporation, it shall be sufficient cause for the cancellation, suspension, revocation or refusal to renew a school license in the event that any officer, director, instructor, employee, or any trustee or member of a partnership or corporation has committed any act or omitted any duty which would be cause for canceling, suspending, revoking, or refusing to renew a license issued to him as an individual under the laws and regulations pertaining to commercial driver training schools. Furthermore, each school licensee owner or manager shall be responsible for the acts of any instructor or employee while acting as his agent, if the licensee approved of those acts or had knowledge of those acts or other similar acts and after such knowledge retained the benefit, proceeds,

profits or advantages accruing from those acts or otherwise ratified those acts.

BOARD OF PHARMACY

Title of Regulation: **VR 530-01-1. Virginia Board of Pharmacy Regulations.**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Effective Date: December 16, 1992.

Summary:

Pursuant to Chapters 667, 737, and 868 of the 1992 Acts of Assembly, the Board of Pharmacy has adopted regulations to require continuing education (CE) for relicensure for pharmacists, to implement a 30-day requirement for notification of a pharmacy closing, and to relicense and regulate wholesale distributors of pharmaceuticals. In addition, the board has taken action to amend or adopt all related fees for licenses and permits as required by regulation.

In adopting regulations for mandatory continuing education, the board has followed the requirements of the legislation in determining the number of hours required for annual renewal, the conditions for an extension or exemption, and the necessary documentation. In response to comments received on the proposed regulations, the board amended the proposed regulation in § 2.6 G to allow a pharmacist who does not have a principal place of practice to maintain documentation of CE at the address on record with the board. The board also amended the definition of the American Council of Pharmaceutical Education to the American Council on Pharmaceutical Education.

One request to amend proposed regulations to require some "live" CE hours was considered. The board also considered numerous comments received encouraging the adoption of the regulation as currently proposed without any requirement for live CE. The board determined that the 15-hour requirement with any combination of approved CE hours, as was originally proposed, is the least burdensome to pharmacists of the Commonwealth.

The legislation also required the creation of an inactive license for pharmacists not currently in practice and not wishing to meet the CE requirements. The board has addressed this requirement in the sections on fees and renewals.

In order to establish criteria for approval of continuing education hours, the board adopted a proposal to accept credits offered and certified by the American Council on Pharmaceutical Education and to create an approval process and fee schedule for entities seeking to become a provider of CE programs. The approval process sets out the requirements necessary to assure compliance and quality in continuing pharmaceutical education.

To implement legislation requiring a 30-day notice to the public of pharmacy closing, the board was required by the statute to set exceptions in its regulations to the 30-day notice. A change in ownership in which prescriptions remain available at the same location was not included in the exceptions, since the board does not consider this situation as meeting the definition of a closing. The regulations also required a 30-day notice of a pharmacy closing be given to the board to coincide with the notice to the public.

In response to legislation deleting the existing definition of "wholesaler" and creating three new categories of licensure for wholesale distributors, medical equipment suppliers, and warehousers, these final regulations set fees for the new categories, establish renewal procedures and requirements, and establish criteria for storage, handling, and distribution of prescription drugs and devices.

In amending the current fees, the board reduced fees in some categories of licensure in recognition of a surplus in the board's budget and in an effort to more equitably reflect the actual administrative costs. New fees are created for an inactive license, for delinquency in payment of fees, and for new categories of warehouser or medical equipment supplier. Likewise, fees have been established for board approval for continuing education programs and providers.

VR 530-01-1. Regulations of the Virginia Board of Pharmacy.

PART I.
GENERAL PROVISIONS.

§ 1.1. Public participation guidelines.

A. Mailing list.

The executive director of the board will maintain a list of persons and organizations who will be mailed the following documents:

1. "Notice of intent" to promulgate regulations.

2. "Notice of public hearing" or "informational proceeding," the subject of which is proposed or existing regulation.

3. Final regulation adopted.

B. Being placed on list: deletion.

Any person wishing to be placed on the mailing list may do so by writing the board. In addition, the board may, in its discretion, add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in subsection A of this section. Those on the list may be periodically requested to indicate their desires to continue to receive documents or to be deleted from the list. After 30 days, the names of the persons who do not respond will be deleted from the list.

C. Notice of intent.

At least 30 days prior to the publication of the notice to conduct an informational proceeding as required by § 9-6.14:1 of the Code of Virginia, the board will publish a "notice of intent." This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

D. Informational proceedings or public hearings for existing rules.

At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulation. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance. Notice of such proceeding will be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations. Such proceeding may be held separately or in conjunction with other informational proceedings.

E. Petition for rulemaking.

Any person may petition the board to adopt, amend, or delete any regulation. Any petition received in a timely manner shall appear on the next agenda of the board. The board shall have sole authority to dispose of the petition.

F. Notice of formulation and adoption.

At any meeting of the board or subcommittee of the board at which the formulation or adoption of regulations is to occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register of Regulations.

G. Advisory committees.

The board may appoint advisory committees as it may deem necessary to provide for adequate citizen participation in the formation, promulgation, adoption, and review of regulations.

§ 1.2. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:

"ACPE" means the American Council [~~*of*~~ *on*] *Pharmaceutical Education.*

"Board" means the Virginia State Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

"Hermetic container" means a container that is impervious to air or any other gas under the ordinary or customary conditions of handling, shipment, storage, and distribution.

"Hospital" or *"nursing home"* means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Light resistant container" means a container that protects the contents from the effects of light by virtue of the specific properties of the material of which it is composed, including any coating applied to it. Alternatively, a clear and colorless or a translucent container may be made light-resistant by means of an opaque covering, in which case the label of the container bears a statement that the opaque covering is needed until the contents have been used. Where a monograph directs protection from light, storage in a light-resistant container is intended.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over

the entire service being rendered or act(s) being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Radiopharmaceutical" means any article that exhibits spontaneous decay or disintegration of any unstable atomic nucleus, usually accompanied by the emission of ionizing radiation and any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such article.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Safety closure container" means a container which meets the requirements of the Federal Poison Prevention Packaging Act, i.e, in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five minute period and that 80% fail in another five minute period after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. *"Cold"* means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).

2. *"Room temperature"* means the temperature prevailing in a working area.

3. *"Controlled room temperature"* is a temperature maintained thermostatically between 15° and 30°C (59° and 86°F).

4. *"Warm"* means any temperature between 30° and 40°C (86° and 104°F).

5. *"Excessive heat"* means any temperature above 40°C (104°F).

6. *"Protection from freezing"* means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of the dosage form, the container label bears an appropriate instruction to protect the product from freezing.

"Tight container" means a container that protects the contents from contamination by extraneous liquids, solids, or vapors, from loss of the drug, and from efflorescence, deliquescence, or evaporation under the ordinary or customary conditions of handling, shipment, storage, and distribution, and is capable of tight reclosure. Where a tight container is specified, it may be replaced by a hermetic container for a single dose of a drug and physical tests to determine whether standards are met shall be as currently specified in United States Pharmacopoeia-National Formulary.

"Unit-dose container" means a container that is a single-unit container, as defined in United States Pharmacopoeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a pharmacy coordinated method of drug dispensing and control in which drugs are distributed in properly labeled unit-dose containers or single-unit containers in ready to administer form as far as possible, in a supply for not more than seven days.

"U.S.P.-N.F." means the United States Pharmacopeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

§ 1.3. Fees.

~~The fee which shall accompany an application or a renewal for a license, permit, registration or the charge for the delinquent payment of a renewal shall be as follows:~~

~~A. The application fee for pharmacist examination shall be $300. If applicant withdraws the application after the deadline for filing, all but $25 of the fee will be refunded.~~

Unless otherwise stated, all fees listed in this section are not refundable.

A. Fee for initial pharmacist licensure.

1. The application and initial examination fee for a pharmacist license shall be $300. If an applicant withdraws the application prior to taking the examination, all but $25 of the fee will be refunded. If the applicant wishes to take portions of the examination on separate dates, the fees shall be as follows:

a. The National Association of Boards of Pharmacy Examination shall be $200.

b. The Federal Drug Law Examination shall be $75.

c. The State Drug Law Examination shall be $75.

2. The application and State Drug Law Examination fee for licensure by endorsement shall be $150. The fee for retaking the examination shall be $75.

3. The application fee for a person whose license has been revoked or suspended indefinitely shall be $300.

~~B. The application fee for a pharmacist license by endorsement shall be $300.~~

~~C.~~ *B.* Renewal of pharmacist license ~~shall be $50~~ .

~~1. The application fee for a person whose license has been revoked or suspended indefinitely shall be $300.~~

~~If a pharmacist does not maintain a license within the Commonwealth, all back renewal fees and a $25 delinquent fee shall be paid before a renewal of the license will be issued.~~

1. The annual fee for renewal of a pharmacist license shall be $50.

2. The annual fee for renewal of an inactive pharmacist license shall be $35.

3. If a pharmacist fails to renew his license within the Commonwealth by the renewal date, he must pay the back renewal fee and a $25 late fee within 60 days of expiration.

4. Failure to renew a pharmacist license within 60 days following expiration shall cause the license to lapse and shall require the submission of a reinstatement application, payment of all unpaid renewal fees, and a delinquent fee of $50.

~~D. Permit to conduct a pharmacy shall be $200 annually.~~

~~E. Physician drug dispensing license shall be $200 annually.~~

~~F. Manufacturing permits.~~

~~1. Nonrestricted manufacturing permit shall be $300 annually.~~

~~2. Restricted manufacturing permit shall be $300 annually.~~

~~3. Wholesaler or distributor shall be $300 annually.~~

~~G. Controlled substances registration shall be $20 annually.~~

~~H. If a licensee fails to renew a required license, registration or permit prior to the expiration date for the license or registration, a $25 late fee shall be assessed.~~

C. Other licenses or permits.

1. The annual permit fee to conduct a pharmacy shall be $200.

2. The annual license fee for a permitted physician to dispense drugs shall be $200.

3. An application for a change of the pharmacist-in-charge shall be accompanied by a fee of $25.

4. An application for a change of location or a remodeling which requires an inspection shall be accompanied by a fee of $100.

5. A nonrestricted manufacturing permit shall be $200 annually.

6. A restricted manufacturing permit shall be $150 annually.

7. A wholesale distributor license shall be $200 annually.

8. A warehouser permit shall be $200 annually.

9. A permit for a medical equipment supplier shall be $150 annually.

10. If a licensee fails to renew a required license or permit prior to the expiration date, a $25 late fee shall be assessed.

11. If a required license or permit is not renewed within 60 days after its expiration, the license or permit shall lapse, and continued practice or operation of business with a lapsed license or permit shall be illegal. Thereafter, reinstatement shall be at the discretion of the board upon submission of an application accompanied by all unpaid renewal fees and a delinquent fee of $50.

D. Controlled substances registration.

1. The annual fee for a controlled substances

registration as required by § 54.1-3422 of the Code of Virginia shall be $20.

2. If a registration is not renewed within 60 days of the expiration date, the back renewal fee and a $10 late fee shall be paid prior to renewal.

3. If a controlled substance registration has been allowed to lapse for more than 60 days, all back renewal fees and a $25 delinquent fee must be paid before a current registration will be issued. Engaging in activities requiring a controlled substance registration without holding a current registration is illegal, and reinstatement of a lapsed registration is at the discretion of the board.

~~I. Duplicate certificate of registration for a pharmacist or the certification of grades and registration for a pharmacist shall be $25.~~

E. Other fees.

1. A request for a duplicate wall certificate shall be accompanied by a fee of $25.

2. A request for certification of grades to another board shall be accompanied by a fee of $25.

F. Board approval of continuing education programs and providers.

1. The application fee for approval of an individual CE program is $100.

2. The application fee for approval of provider status is $300.

3. Renewal of approved provider status is $300 paid biennially.

PART II.
ENTRY AND LICENSURE REQUIREMENTS.

§ 2.1. Practical experience required.

A. Each applicant for licensure by examination shall have gained practical experience in prescription compounding and dispensing within a pharmacy for a period of not less than six months.

B. During the six months of practical experience required, the applicant shall accumulate a minimum of 1,000 hours. For purposes of this regulation, credit will not be given for more than 40 hours in any one week.

C. All practical experience credit required shall only be gained after completion of the first professional year in an approved school of pharmacy.

D. Practical experience gained in a college of pharmacy which has a program designed to provide the applicant with practical experience in all phases of pharmacy practice and which program is approved by the American Council on Pharmaceutical Education will be accepted by the board for the time period during which the student is actually enrolled. The applicant will be required to gain any additional experience needed toward fulfilling the six months of experience required.

E. An applicant shall not be admitted to the examination unless all of the practical experience has been gained.

§ 2.2. Procedure for gaining practical experience.

A. Each pharmacy student, except those enrolled in an approved college clerkship program, who desires to gain practical experience in a pharmacy within the Commonwealth shall register with the board on a form provided by the board prior to becoming so engaged. This requirement shall also apply to students gaining practical experience within the Commonwealth for licensure in another state. The student shall be called a "student externe."

B. Graduates in pharmacy of an approved school of pharmacy who wish to gain practical experience within the Commonwealth shall register with the board prior to being so engaged. Such graduates shall be called "pharmacy interne." Experience gained in another state must be certified by the board in the state in which the experience was gained.

C. The applicant shall be supervised by a pharmacist who holds an unrestricted license and assumes full responsibility for the training, supervision and conduct of the externe or the interne. The supervising pharmacist shall not supervise more than one interne or externe during the same time period for experience during or after the last professional year.

D. The practical experience of the student externe shall be gained nonconcurrent with the school year excepting that gained in any program of a pharmacy school which meets the requirements of § 54.1-3312 of the Code of Virginia.

E. Any practical experience gained within any state by a student externe or a pharmacy interne who has not registered with the board in the state in which the experience is being gained will not be accepted by this board nor certified to another state by the board.

F. All practical experience of the student externe shall be evidenced by an affidavit which shall be filed with the application for examination for licensure.

G. An applicant for examination shall file the certificate of experience no less than 30 days prior to the date of the examination, and such certificates required in G and H of this section shall be on a form prescribed by the board.

H. The registration of a student externe shall be valid

only while the student is enrolled in a school of pharmacy. The registration card issued by the board shall be returned to the board upon failure to be enrolled.

§ 2.3. Curriculum and approved colleges of pharmacy.

A. Length of curriculum.

The following educational requirements for licensure for the specified periods shall be recognized by the board for the purpose of licensure.

1. On and after June 1, 1928, but before June 1, 1936, the applicant for licensure shall have been graduated from a three-year course of study with a pharmacy graduate or pharmacy college degree in pharmacy awarded.

2. On and after June 1, 1936, but before June 1, 1964, the applicant for licensure shall have been graduated from a four-year course of study with a Bachelor of Science degree in pharmacy awarded.

3. On and after June 1, 1964, the applicant for licensure shall have been graduated from a five-year course of study with a Bachelor of Science degree in pharmacy awarded.

B. First professional degree required.

In order to be licensed as a pharmacist within this Commonwealth, the applicant shall have been granted the first professional degree from a program of a college of pharmacy which meets the requirements of § 54.1-3312 of the Code of Virginia.

§ 2.4. Content of the examination and grades required.

A. The examination for licensure as a pharmacist shall consist of an integrated examination of pharmacy practice, pharmacology, pharmacy mathematics, and such other subjects as are necessary to assure that the candidate possesses the necessary knowledge and skills to practice pharmacy. Additional examination of the candidates' knowledge of federal and state laws related to pharmacy practice shall be provided by the board.

B. Passing requirements.

The passing grade on the integrated pharmacy examination shall be not less than 75. The passing grade on the law examination shall be not less than 75.

C. Limitation on admittance to examination.

When an applicant for licensure by examination fails to meet the passing requirements of paragraph B of this section on three occasions, he shall not be readmitted to the examinations until he has completed an additional six months of practical experience as a pharmacy interne as set forth in § 2.2.

§ 2.5. Renewal of license.

A. Pharmacist licenses expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee, renewal form, and statement of compliance with continuing education requirements.

B. A pharmacist newly licensed on or after October 1 shall not be required to renew that license until December 31 of the following year.

C. A pharmacist who fails to renew his license by the expiration date has 60 days in which to renew by submission of the renewal and late fee, renewal form, and statement of compliance with continuing education requirements.

D. If a pharmacist fails to renew within the 60 days of expiration, his license will lapse, and he must submit an application for reinstatement of license along with payment of all back renewal fees, a delinquent fee, and statement of compliance with continuing education requirements. Practice of pharmacy with a lapsed license shall be illegal, and reinstatement shall be at the discretion of the board.

E. A pharmacist who has been registered as inactive for more than one year must apply for reinstatement, comply with CE requirements, and pay the current year renewal fee in order to resume active licensure.

§ 2.6. Requirements for continuing education.

A. On and after December 31, 1993, a licensee shall be required to have completed a minimum of 1.5 CEU's or 15 contact hours of continuing pharmacy education in an approved program for each annual renewal of licensure. CEU's or hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing pharmacy education program is:

1. One that is approved by the American Council on Pharmacy Education and carries the provider logo and number of the ACPE; or

2. One that is approved by the board.

C. A licensee is exempt from completing CE requirements and considered in compliance on the first renewal date following his initial licensure.

D. The board may grant an extension of up to one year for the completion of CE requirements upon a written request from the licensee prior to the renewal date. Any subsequent extension shall be granted only for good cause shown. Such an extension shall not relieve the licensee of the requirement for CEU's or hours.

E. The board may grant an exemption for all or part of the CE requirements due to circumstances beyond the control of the pharmacist, such as temporary disability, mandatory military service, or officially declared disasters.

F. A licensee is required to provide information on compliance with CE requirements in their annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their CE requirements by the deadline date as specified by the board.

G. All licensees are required to maintain original documents verifying the date and subject of the program or activity, the CEU's or contact hours, and certification from an approved provider. Documentation shall be maintained for a period of two years following renewal in a file available to inspectors at the [~~pharmacists'~~ pharmacist's] prinicipal place of practice [or, if there is no principal place of practice, at the pharmacist's address of record].

H. A pharmacist who holds an inactive license, who has allowed his license to lapse or who has had his license suspended or revoked must submit evidence of completion of CEU's or hours equal to the requirements for the number of years in which his license has not been active.

I. Pharmacists who are licensed by other states and who have obtained a minimum of 1.5 CEU's or 15 contact hours of approved CE programs of such other states need not obtain additional hours.

§ 2.7. Approval of continuing education programs and providers.

A. The board will approve without application or further review any program offered by a ACPE-approved provider and will accept for credit certificates bearing the official ACPE logo and program number.

B. The board may approve an individual CE program or may grant approved provider status under the following provisions:

1. Approval of an individual CE program.

a. An approved individual program is a course, activity, or lecture which includes subject matter related to the competency of the practice of pharmacy and which has been approved for CE credit by the board.

b. In order to receive approval for an individual program, the sponsor or provider must make application prior to the program offering on a form provided by the board. The information which must be provided shall include but not be limited to: name of provider, location, date and time of program, charges to participants, description of program content and objectives, credentials of speaker or author, method of delivery, evaluation procedure, evidence of a pre and post test, credits requested, mechanism for record-keeping, and any such information as the board deems necessary to assure quality and compliance.

c. The sponsor making application for board approval of an individual program must pay a fee as required in § 1.3 F of this regulation.

d. The board shall notify the provider or sponsor within 60 days following the receipt of a completed application of approval or disapproval of a program and the number of credits which may be awarded.

2. Approval of CE provider status.

a. An approved provider is any person, corporation, school, association, or other entity who has demonstrated an ability to provide qualified CE programs and has met the requirements of the board for approved provider status.

b. An applicant for approved provider status must have sponsored at least three individually board approved programs for a minimum period of two years immediately preceding the submission of application for approved status.

c. The application for approved provider status shall include but not be limited to: information on the entity making application, a listing of approved CE programs offered during the last two years, accreditation, methods of promotion and delivery of programs, assessment process, maintenance of records, policy on grievances and tuition, standards for selection of speakers, program goals and objectives, and a description of facilities adequate to meet those objectives.

d. The application for approved provider status shall be accompanied by a fee as required in § 1.3 F.

e. An applicant who has been granted approved provider status is permitted to offer CE programs by submitting to the board information on that offering at least 10 days prior to the program. The approved provider is not required to submit application for approval of each individual program nor to pay the fee for such approval.

f. An approved provider must have that status renewed every two years, must pay the renewal fee, and must provide information on program offerings to the board for review.

g. The board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the necessary standards

and requirements.

3. Certificate of completion. The provider of an approved program shall provide to each participant who completes the required hours and passes the post test a certification with the name of the provider, name of the participant, description of course and method of delivery, number of hours credited, date of completion, and program identification number.

4. Maintenance of records. The provider of an approved program shall maintain all records on that program, its participants, and hours awarded for a period of three years and shall make those records available to the board upon request.

5. Monitoring of programs. The board shall periodically review and monitor programs. The provider of a CE program shall waive registration fees for a representative of the board for that purpose.

6. Changes in programs or providers. Any changes in the information previously provided about an approved program or provider must be submitted or the board may withdraw its approval.

PART III.
PHARMACIES.

§ 3.1. Pharmacy permits generally.

A. A pharmacy permit shall not be issued to a pharmacist to be simultaneously in charge of more than one pharmacy.

B. The pharmacist-in-charge or the pharmacist on duty shall control all aspects of the practice of pharmacy. Any decision overriding such control of the pharmacist-in-charge or other pharmacist on duty by nonpharmacist personnel shall be deemed the practice of pharmacy.

C. When the pharmacist-in-charge ceases practice at a pharmacy, an application for a new pharmacy permit shall be filed within 10 days.

§ 3.2. Special or limited-use pharmacy permits.

For good cause shown, the board may issue a special or limited-use pharmacy permit, when the scope, degree or type of pharmacy practice or service to be provided is of a special, limited or unusual nature as compared to a regular pharmacy service. The permit to be issued shall be based on special conditions of use requested by the applicant and imposed by the board in cases where certain requirements of regulations may be waived. The following conditions shall apply:

1. A policy and procedure manual detailing the type and method of operation, hours of operation, and method of documentation of continuing pharmacist control must accompany the application.

2. The issuance and continuation of such permits shall be subject to continuing compliance with the conditions set forth by the board.

§ 3.3. Pharmacies going out of business.

~~Ten~~ *A. At least 30* days prior to the closing date, the board shall be notified by the pharmacist-in-charge or ~~other responsible person of the closing of the pharmacy~~ *owner* . ~~At that time,~~ The disposition of all Schedule II through VI drugs shall be reported to the board. If the pharmacy drug stock is to be transferred to another licensee, the pharmacist-in-charge or ~~other responsible person~~ *owner* shall inform the board of the name and address of the licensee to whom the drugs are being transferred *and the date of transfer* .

B. Exceptions to the 30-day public notice as required in § 54.1-3434.01 of the Code of Virginia and the notice required in § 3.3 A of these regulations shall be sudden closing due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or other emergency circumstances as approved by the board.

C. In the event of an exception to the 30-day notice as required in § 54.1-3434.01 of the Code of Virginia and in § 3.3 A of these regulations, the pharmacist-in-charge shall provide notice as far in advance of closing as allowed by the circumstances.

§ 3.4. New pharmacies.

A. Inspection and notice required for new pharmacies.

1. The proposed location of a pharmacy practice area shall be inspected by an agent of the board prior to the issuance of a permit.

2. Pharmacy permit applications which indicate a requested inspection date, or requests which are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

3. Requested inspection dates which do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

B. At the time of the inspection, the dispensing area shall comply with §§ 3.5, 3.6, 3.7, 3.8, and 3.10 of these regulations.

C. Drugs shall not be stocked within the proposed pharmacy until adequate safeguards against diversion have been provided and approved by the board or its authorized agent.

§ 3.5. Physical standards for all pharmacies.

A. Space requirements.

The area which is to be used for the storage, compounding, and preparation of prescriptions for Schedule II through VI drugs shall not be less than 240 square feet. The patient waiting area or the area used for devices, cosmetics, and proprietary medicines shall not be considered a part of the minimum 240 square feet. The total area shall be consistent with the size and scope of the services provided.

B. Access to dispensing area.

Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the pharmacist shall not be through the dispensing area or drug storage area. This subsection shall not apply to dispensing areas which are established prior to the effective date of this regulation.

C. The pharmacy shall be constructed of permanent and secure materials. Trailers or other moveable facilities or temporary construction shall not be permitted.

D. The entire area of the location of the pharmacy practice, including all areas where drugs are stored shall be well lighted and well ventilated; the proper storage temperature shall be maintained to meet U.S.P.-N.F. specifications for drug storage.

E. The counter work space shall be used only for the compounding and dispensing of drugs and necessary record keeping.

F. A sink with hot and cold running water shall be within the immediate compounding and dispensing area.

G. Adequate refrigeration facilities for the storage of drugs requiring cold storage temperature shall be maintained within the compounding and dispensing area.

§ 3.6. Sanitary conditions.

A. The entire area of any place bearing the name of a pharmacy shall be maintained in a clean and sanitary manner and in good repair and order.

B. The dispensing area and work counter space and equipment in the dispensing area shall be maintained in a clean and orderly manner.

C. Adequate trash disposal facilities and receptacles shall be available.

§ 3.7. Required minimum equipment.

The pharmacist-in-charge shall be responsible for maintaining the following equipment:

~~A.~~ *1.* A current copy of the United States Pharmacopeia Dispensing Information Reference Book.

~~B.~~ *2.* A set of Prescription Balances, sensitive to 15 milligrams, and weights.

~~C.~~ *3.* A refrigerator with a monitoring thermometer.

~~D.~~ *4.* A copy of the current Virginia Drug Control Act and board regulations.

~~E.~~ *5.* A current copy of the Virginia Voluntary Formulary.

~~F.~~ *6.* A laminar flow hood for pharmacies engaging in the compounding of sterile product(s).

§ 3.8. Safeguards against diversion of drugs.

A device for the detection of breaking shall be installed in each dispensing and drug storage area of each pharmacy. The installation and the device shall be based on accepted burglar alarm industry standards, and shall be subject to the following conditions:

~~A.~~ *1.* The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

~~B.~~ *2.* The device shall be maintained in operating order.

~~C.~~ *3.* The device shall fully protect the immediate drug compounding, dispensing and storage areas and shall be capable of detecting breaking by any means whatsoever in the area when the pharmacy or other business in which the pharmacy is located is closed.

~~D.~~ *4.* The alarm system must have an auxiliary source of power.

~~E.~~ *5.* This regulation shall not apply to pharmacies which have been granted a permit prior to the effective date of this regulation provided a previously approved security alarm system is in place and provided further that a breaking and loss of drugs does not occur.

§ 3.9. Special security requirements.

A. If the compounding and dispensing area is to be closed while the remainder of the pharmacy or business in which the dispensing area is located is open for the conduct of business, an alarm system shall be installed in the dispensing area and be subject to the following requirements:

1. The alarm system is activated and operated separately from any other alarm system in the pharmacy or the business in which the dispensing area is located.

2. The alarm system will detect breaking in the dispensing area when it is closed.

3. The alarm system is controlled only by the pharmacist.

B. An emergency key or access code to the system shall be maintained as set forth in § 3.10 of these regulations.

C. If the dispensing and drug storage area is enclosed from floor to ceiling, the separately activated alarm system referred to in this regulation shall not be required.

§ 3.10. Dispensing area enclosures.

A. The drug dispensing and drug storage areas of each pharmacy shall be provided with enclosures subject to the following conditions:

1. The enclosure shall be constructed in such a manner that it protects the controlled drug stock from unauthorized entry and from pilferage at all times whether or not a pharmacist is on duty.

2. The enclosure shall be of sufficient height as to prevent anyone from reaching over to gain access to the drugs.

3. Entrances to the enclosed area must have a door which extends from the floor and which is at least as high as the adjacent counters or adjoining partitions.

4. Doors to the area must have locking devices which will prevent entry in the absence of the pharmacist.

B. The door keys to the dispensing areas shall be subject to the following requirements:

1. Only pharmacists practicing at the pharmacy and authorized by the pharmacist-in-charge shall be in possession of any keys to the locking device on the door to such enclosure.

2. The pharmacist may place a key in an envelope or other container which contains a seal and a signature placed by the pharmacist on the envelope or container in a safe or vault within

3. The key may be used to allow emergency entrance to the dispensing area by other pharmacists.

C. Restricted access to the dispensing area.

The prescription drug compounding and dispensing area is restricted to pharmacists, externes, and internes who are practicing at the pharmacy. Clerical assistants and other persons designated by the pharmacist may be allowed access by the pharmacist but only during the hours the pharmacist is on duty.

§ 3.11. Drugs outside of dispensing area.

Any Schedule II through VI drug not stored within the prescription compounding and dispensing area and kept for stock replenishing shall be secured and access to it shall be restricted to the pharmacist and persons authorized by the pharmacist.

§ 3.12. Prescriptions awaiting delivery.

Prescriptions prepared for delivery to the patient may be placed in a secure place outside of the compounding and dispensing area and access to the prescriptions restricted by the pharmacist to designated clerical assistants. The prepared prescriptions may be transferred to the patient whether or not a pharmacist is on duty.

§ 3.13. Dispersion of Schedule II drugs.

Schedule II drugs may be dispersed with other schedules of drugs or shall be maintained within a locked cabinet, drawer, or safe.

§ 3.14. Safeguards for controlled paraphernalia.

Controlled paraphernalia shall not be placed on open display or in an area completely removed from the drug compounding and dispensing area whereby patrons will have free access to such items or where the pharmacist cannot exercise reasonable supervision and control.

§ 3.15. Expired drugs; security.

Any drug which has exceeded the expiration date shall be separated from the stock used for dispensing and may be maintained in a designated area with the unexpired stock prior to the disposal of the expired drug.

§ 3.16. Destruction of Schedule II through V drugs in pharmacies.

If a pharmacist-in-charge wishes to destroy unwanted Schedule II through V drugs kept for dispensing, in lieu of returning the drugs to the Drug Enforcement Administration (DEA), he shall use the following procedures for the drug destruction:

~~A.~~ *1.* At least 14 days prior to the destruction date, the pharmacist-in-charge shall provide a written notice to the board office; the notice shall state the following:

~~1.~~ *a.* Date, time, and manner or place of destruction.

~~2.~~ *b.* The names of the pharmacists who will witness the destruction process.

~~B.~~ *2.* If the destruction date is to be changed or the destruction does not occur, a new notice must be provided to the board office as set forth above in this subsection.

~~C.~~ *3.* The DEA Drug Destruction Form No. 41 must be used to make a record of all drugs to be destroyed.

~~D.~~ *4.* The drugs must be destroyed by burning in an incinerator; an alternate method of flushing may be used if incineration is not possible and if permitted by the municipality.

~~E.~~ *5.* The actual destruction shall be witnessed by the pharmacist-in-charge and another pharmacist not employed by the pharmacy.

~~F.~~ *6.* Each form shall show the following information:

~~1.~~ *a.* Legible signatures of the pharmacist-in-charge and the witnessing pharmacist;

~~2.~~ *b.* The license numbers of the pharmacists destroying the drugs; and

~~3.~~ *c.* The date of the destruction.

~~G.~~ *7.* At the conclusion of the destruction of the drug stock:

~~1.~~ *a.* Two copies of the completed destruction form shall be sent to Drug Enforcement Administration, Washington Field Division, Room 2558, 400 - 6th Street S.W., Washington, D.C. 20024, Attn: Diversion Control Group.

~~2.~~ *b.* A copy of the completed destruction form shall be sent to the office of the board.

~~3.~~ *c.* A copy of the completed destruction form shall be retained with the pharmacy inventory records.

PART IV.
NUCLEAR PHARMACIES.

§ 4.1. General requirements for pharmacies providing radiopharmaceutical services.

A. A permit to operate a pharmacy providing radiopharmaceutical services shall be issued only to a qualified nuclear pharmacist. In emergency situations, in the pharmacist's absence, he may designate one or more other qualified pharmacists to have access to the licensed area. These individuals may obtain single doses of radiopharmaceuticals for the immediate emergency and shall document such withdrawals in the control system.

B. Pharmacies providing ordinary pharmacy services in addition to radiopharmaceutical services shall comply with all regulations applicable to pharmacies in general. Pharmacies providing only radiopharmaceutical services shall comply with all regulations related to physical standards, sanitary conditions and security.

C. The nuclear pharmacy area shall be separate from the pharmacy areas for nonradioactive drugs and shall be secured from unauthorized personnel. All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area, occupying at least 25 square feet of space, separate from and exclusive of the hot laboratory, compounding, dispensing, quality assurance and office area.

D. A prescription order for a radiopharmaceutical shall be dispensed in a unit-dose package. A pharmacy may furnish the radiopharmaceuticals for office use only to practitioners for an individual patient except for the occasional transfer to a pharmacist.

E. In addition to any labeling requirements of the board for nonradioactive drugs, the immediate outside container of a radioactive drug to be dispensed shall also be labeled with: (i) the standard radiation symbol; (ii) the words "Caution–Radioactive Material"; (iii) the name of the radionuclide; (iv) the chemical form; (v) the amount of radioactive material contained, in millicuries or microcuries; (vi) if a liquid, the volume in milliliters; (vii) the requested calibration time for the amount of radioactivity contained; and (viii) the practitioner's name and the assigned lot number.

F. The immediate inner container shall be labeled with: (i) the standard radiation symbol; (ii) the words "Caution–Radioactive Material"; and (iii) the prescription number.

G. The amount of radioactivity shall be determined by radiometric methods for each individual dose immediately prior to dispensing.

H. Nuclear pharmacies may redistribute approved radioactive drugs if the pharmacy does not process the radioactive drugs in any manner nor violate the product packaging.

§ 4.2. Qualification as a nuclear pharmacist.

In order to practice as a nuclear pharmacist, a pharmacist shall possess the following qualifications:

1. Meet Nuclear Regulatory Commission standards of training for medically used or radioactive by-product material.

2. Have received a minimum of 90 contact hours of didactic instruction in nuclear pharmacy.

3. Attain a minimum of 160 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an approved college of pharmacy.

4. Submit an affidavit of experience and training to the board.

PART V.
DRUG INVENTORY AND RECORDS.

§ 5.1. Manner of maintaining records, prescriptions,

inventory records.

A. Each pharmacy shall maintain the inventories and records of drugs as follows:

1. Inventories and records of all drugs listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

2. Inventories and records of drugs listed in Schedules III, IV, and V may be maintained separately or with records of Schedule VI drugs but shall not be maintained with other records of the pharmacy.

3. Location of records. All records of Schedule II through V drugs shall be maintained at the same location as the stock of drugs to which the records pertain.

4. Inventory after drug theft. In the event that an inventory is taken as the result of a theft of drugs pursuant to § 54.1-3404 of the Drug Control Act, the inventory shall be used as the opening inventory within the current biennial period. Such an inventory does not preclude the taking of the required inventory on the required biennial inventory date.

B. Prescriptions.

1. Schedule II drugs. Prescriptions for Schedule II drugs shall be maintained in a separate prescription file.

2. Schedule III through V drugs. Prescriptions for Schedule III through V drugs shall be maintained either in a separate prescription file for drugs listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescriptions of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than one inch high and filed in the prescription file for drugs listed in the usual consecutively numbered prescription file for Schedule VI drugs.

§ 5.2. Automated data processing records of prescriptions.

A. An automated data processing system may be used for the storage and retrieval of original and refill dispensing information for prescriptions instead of manual record keeping requirements, subject to the following conditions:

1. Any computerized system shall provide retrieval (via CRT display or printout) of original prescription information for those prescriptions which are currently authorized for dispensing.

2. Any computerized system shall also provide retrieval via CRT display or printout of the dispensing history for prescriptions dispensed during the past two years.

3. Documentation of the fact that the refill information entered into the computer each time a pharmacist refills an originial prescription for a drug is correct shall be provided by the individual pharmacist who makes use of such system. If the system provides a printout of each day's prescription dispensing data, the printout shall be verified, dated and signed by the individual pharmacist who dispensed the prescription. The individual pharmacist shall verify that the data indicated is correct and then sign the document in the same manner as he would sign a check or legal document (e.g., J.H. Smith or John H. Smith).

In place of such printout, the pharmacy shall maintain a bound log book, or separate file, in which each individual pharmacist involved in dispensing shall sign a statement each day, in the manner previously described, attesting to the fact that the dispensing information entered into the computer that day has been reviewed by him and is correct as shown.

B. Printout of dispensing data requirements.

Any computerized system shall have the capability of producing a printout of any dispensing data which the user pharmacy is responsible for maintaining under the Drug Control Act.

§ 5.3. Pharmacy repackaging of drug; records required.

A. Records required.

Pharmacies in which bulk reconstitution of injectables, bulk compounding or the prepackaging of drugs is performed shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the drug(s) used, strength, if any, quantity prepared, initials of the pharmacist supervising the process, manufacturer's or distributor's name, control number or the assigned number, and an expiration date.

B. Expiration date.

The drug name, strength, if any, the manufacturer's or distributor's name and control number or assigned control number, and an appropriate expiration date shall appear on any subsequently repackaged or reconstituted units:

1. If U.S.P.-N.F. Class B or better packaging material is used for oral unit dose packages, an expiration date not to exceed six months or the expiration date shown on the original manufacturing bulk container, whichever is less, shall appear on the repackaged or reconstituted units.

2. If it can be documented that the repackaged unit has a stability greater than six months, an appropriate expiration date may be assigned.

3. If U.S.P.-N.F. Class C or less packaging material is used for oral, solid medication, an expiration date not to exceed 30 days shall appear on the repackaged or reconstituted units.

PART VI.
PRESCRIPTION ORDER AND DISPENSING STANDARDS.

§ 6.1. Distribution of a prescription device.

Any person, except those persons who are registered under the provisions of § 54.1-3434 of the Drug Control Act, who sells or distributes a Schedule VI device which under the applicable federal or state law may be sold, dispensed, or distributed only by or on the order of prescription of a practitioner, shall maintain every such prescription or order on file for two years.

§ 6.2. Emergency prescriptions for Schedule II drugs.

In case of an emergency situation, a pharmacist may dispense a drug listed in Schedule II upon receiving oral authorization of a prescribing practitioner, provided that:

1. The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period;

2. The prescription shall be immediately reduced to writing by the pharmacist and shall contain all information required in § 54.1-3410 of the Drug Control Act, except for the signature of the prescribing practitioner;

3. If the pharmacist does not know the practitioner, he shall make a reasonable effort to determine that the oral authorization came from a practitioner using his phone number as listed in the telephone directory or other good-faith efforts to ensure his identity; and

4. Within 72 hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of § 54.1-3410 of the Drug Control Act, the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail, it must be postmarked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacist shall notify the nearest office of the Drug Enforcment Administration and the board if the prescribing practitioner fails to deliver a written prescription to him. Failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing practitioner.

§ 6.3. Partial dispensing of Schedule II prescriptions.

A. The partial filling of a prescription for a drug listed in Schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription, and he makes a notation of the quantity supplied on the face of the written prescription. The remaining portion of the prescription may be dispensed within 72 hours of the first partial dispensing; however, if the remaining portion is not or cannot be dispensed within the 72-hour period, the pharmacist shall so notify the prescribing practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

B. Prescriptions for Schedule II drugs written for patients in nursing homes may be dispensed in partial quantities, to include individual dosage units. For each partial dispensing, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained and readily retrievable) the date of the partial dispensing, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of Schedule II drugs in all partial dispensing shall not exceed the total quantity prescribed. Schedule II prescriptions shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

C. Information pertaining to current Schedule II prescriptions for patients in a nursing home may be maintained in a computerized system if this system has the capability to permit:

1. Output (display or printout) of the original prescription number, date of issue, identification of prescribing practitioner, identification of patient, identification of the nursing home, identification of drug authorized (to include dosage form, strength, and quantity), listing of partial dispensing under each prescription and the information required in subsection B of this section.

2. Immediate (real time) updating of the prescription record each time a partial dispensing of the prescription is conducted.

§ 6.4. Dispensing of prescriptions; acts restricted to pharmacists.

A. The following acts shall be performed by a pharmacist, or by a student externe or pharmacy interne, provided a method for monitoring such acts of the externe or interne is provided:

1. The accepting of an oral prescription from a practitioner and the reducing of such oral prescription to writing.

2. The personal supervision of the compounding of extemporaneous preparations.

3. The providing of drug information, including notice of changes or substitution of medication, to practitioners and to the patients.

4. The interpretation of the information contained in medication profile records.

B. Persons assisting pharmacist.

The following shall apply to persons present in the compounding and dispensing area:

1. Only one person who is not a pharmacist may be present in the immediate compounding and dispensing area at any given time with each pharmacist for the purpose of assisting the pharmacist in preparing and packaging of prescriptions.

2. In addition to the person authorized in ~~paragraph~~ *subdivision* 1 ~~in~~ *of* this [~~section,~~ *subsection*] personnel authorized by the pharmacist may be present in the immediate compounding and dispensing area for the purpose of performing clerical functions.

C. Certification of completed prescription.

After the prescription has been prepared and prior to the delivery of the order, the pharmacist shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of dispensing as a certification of the accuracy of, and the responsibility for, the entire transaction.

§ 6.5. Refilling of prescriptions.

A. Schedule II drugs.

A prescription for a Schedule II drug shall not be refilled.

B. Schedule III through V drugs.

A prescription for a drug listed in Schedule III, IV, or V shall not be dispensed or refilled more than six months after the date on which such prescription was issued, and no such prescription authorized to be filled may be refilled more than five times.

1. Each refilling of a prescription shall be entered on the back of the prescription, initialed and dated by the pharmacist as of the date of dispensing. If the pharmacist merely initials and dates the prescription, it shall be presumed that the entire quantity ordered was dispensed.

2. Partial dispensing of prescriptions. The partial dispensing of a prescription for a drug listed in Schedule III, IV, or V is permissible, provided that:

a. Each partial dispensing is recorded in the same manner as a refilling;

b. The total quantity of drug dispensed in all partial dispensing does not exceed the total quantity prescribed; and

c. No dispensing occurs after six months after the date on which the prescription order was issued.

C. Schedule VI drugs.

1. A prescription for a drug listed in Schedule IV shall be refilled only as expressly authorized by the practitioner. If no such authorization is given, the prescription shall not be refilled.

2. A prescription for a Schedule VI drug or device shall not be refilled if the prescription is more than two years old. In instances where the drug or device is to be continued, authorization shall be obtained from the prescriber and a new prescription shall be filed.

D. As an alternative to all manual record-keeping requirements provided for in subsections A, B and C of this section, an automated data processing system as provided in § 5.2 may be used for the storage and retrieval of dispensing information for prescription for drugs dispensed.

PART VII.
LABELING AND PACKAGING STANDARDS FOR PRESCRIPTIONS.

§ 7.1. Labeling of prescription as to content and quantity.

~~A.~~ Unless otherwise directed by the prescribing practitioner, any drug dispensed pursuant to a prescription shall bear on the label of the container, in addition to other requirements, the following information:

1. The drug name and strength, when applicable;

a. If a trade name drug is dispensed, the trade name of the drug or the generic name of the drug.

b. If a generic drug is dispensed in place of a trade name drug, in addition to the requirements of § 32.1-87 A of the Code of Virginia, one of the following methods shall be used:

(1) The generic name, or

(2) A name for the product dispensed which appears on the generic manufacturer's label.

(3) The generic name followed by the words "generic for" followed by the trade name of the drug for which the generic drug is substituted.

2. The number of dosage units, or if liquid, the number of milliliters dispensed.

§ 7.2. Packaging standards for dispensed prescriptions.

A drug shall be dispensed only in packaging approved by the current U.S.P.-N.F. for that drug. In the absence of such packaging standard for that drug, it shall be dispensed in a well-closed container.

§ 7.3. Special packaging.

A. Each drug dispensed to a person in a household shall be dispensed in special packaging except when otherwise directed in a prescription by a practitioner, when otherwise requested by the purchaser, or when such drug is exempted from such requirements promulgated pursuant to the Poison Prevention Packaging Act of 1970.

B. Each pharmacy may have a sign posted near the compounding and dispensing area advising the patients that nonspecial packaging may be requested.

PART VIII.
STANDARDS FOR PRESCRIPTION TRANSACTIONS.

§ 8.1. Issuing a copy of a prescription that can be refilled.

A. A copy of a prescription for a drug which pursuant to § 54.1-3411 of the Code of Virginia, can be refilled at the time the copy is issued shall be given upon request to another pharmacist.

B. The transfer of original prescription information for a drug listed in Schedules III through VI for the purpose of refill dispensing is permissible between pharmacies if the transfer is communicated directly between two pharmacists, and the transferring pharmacist records the following information:

1. Records the word "VOID" on the face of the invalidated prescription;

2. Records on the reverse of the invalidated prescription the name, address, and the Drug Enforcement Administration (DEA), registry number of the pharmacy to which it was transferred, except for a prescription for a Schedule VI drug, and the name of the pharmacist receiving the prescription information; and

3. Records the date of the transfer and the name of the pharmacist transferring the information.

C. The pharmacist receiving the transferred prescription information shall reduce to writing the following:

1. Write the word "TRANSFER" on the face of the transferred prescription.

2. Provide all information required to be on a prescription and include:

a. Date of issuance of original prescription;

b. Original number of refills authorized on the original prescription;

c. Date of original dispensing;

d. Number of valid refills remaining and date of last refill;

e. Pharmacy name, address, DEA registry number except for Schedule VI prescriptions, and original prescription number from which the prescription information was transferred; and

f. Name of transferring pharmacist.

3. Both the original and transferred prescription shall be maintained for a period of two years from the date of last refill.

D. Nothing in this regulation shall prevent the giving of a prescription marked "For Information Only" to a patient.

§ 8.2. Issuing a copy of a prescription that cannot be refilled.

A. A copy of a prescription for a drug which, pursuant to § 54.1-3411 of the Drug Control Act, cannot be refilled at the time the copy is issued, shall be given on request of a patient but such copy shall be marked with the statement "FOR INFORMATION ONLY," the patient's name and address, the date of the original prescription, and the date the copy was given.

B. A copy marked in this manner is not a prescription, as defined in § 54.1-3400 of the Drug Control Act, and shall not be refilled.

C. The original prescription shall indicate that a copy has been issued, to whom it was issued, and the issuing date.

§ 8.3. Confidentiality of patient information.

A pharmacist shall not exhibit, dispense, or reveal any prescription or discuss the therapeutic effects thereof, or the nature or extent of, or the degree of illness suffered by or treatment rendered to, any patient served by the pharmacist with any person other than the patient or his authorized representative, the prescriber, or other licensed practitioner caring for this patient, or a person duly authorized by law to receive such information.

§ 8.4. Kickbacks, fee-splitting, interference with supplier.

A. A pharmacist shall not solicit or foster prescription practice by secret agreement with a prescriber of drugs or any other person providing for rebates, "kickbacks", fee-splitting, or special charges in exchange for prescription orders.

B. A pharmacist shall not interfere with the patient's right to choose his supplier of medication or cooperate with any person or persons in denying a patient the opportunity to select his supplier of prescribed medications.

§ 8.5. Returning of drugs and devices.

Drugs or devices shall not be accepted for return or exchange by any pharmacist or pharmacy for resale after such drugs and devices have been taken from the premises where sold, distributed, or dispensed unless such drug or devices are in the manufacturer's original sealed containers or in unit-dose container which meets the U.S.P.-N.F. Class A or Class B container requirement.

§ 8.6. Physician licensed by the board.

Physicians licensed by the board to dispense drugs shall be subject to the following sections of these regulations:

§ 3.8. Safeguards against diversion of drugs.

§ 5.1. Manner of maintaining records, prescriptions, inventory records.

§ 6.4. Filling of prescriptions.

§ 6.5. Refilling of prescriptions.

§ 7.1. Labeling of prescriptions.

§ 7.2. Packaging standards for dispensed prescriptions.

§ 7.3. Special packaging.

§ 8.5. Returning of drugs and devices.

PART IX.
UNIT DOSE DISPENSING SYSTEMS.

§ 9.1. Unit dose dispensing system.

A unit dose drug dispensing system may be utilized for the dispensing of drugs to patients in a hospital or nursing home. The following requirements shall apply:

A. If a unit dose system is utilized by a pharmacy, no more than a seven-day supply of drugs shall be dispensed at any one given time.

B. A signed order by the prescribing practitioner shall accompany the requests for a Schedule II drug, except that a verbal order for a hospital patient for a Schedule II controlled substance may be transmitted to a licensed nurse or pharmacist employed by the hospital who will promptly reduce the order to writing in the patient's chart. Such an order shall be signed by the prescriber within 72 hours.

C. Properly trained personnel may transcribe the physician's drug orders to a patient profile card, fill the medication carts, and perform other such duties related to a unit dose distribution system provided these are done under the personal supervision of a pharmacist.

D. All dosages and drugs shall be labeled with the drug name, strength, lot number and expiration date when indicated.

E. The patient's individual drug drawer or tray shall be labeled with the patient's name and location.

F. All unit dose drugs intended for internal use shall be maintained in the patient's individual drawer or tray unless special storage conditions are necessary.

G. A back-up dose of a drug of not more than one dosage unit may be maintained in the patient's drawer, tray, or special storage area provided that the dose is maintained in the patient's drawer, tray, or special storage area with the other drugs for that patient.

H. A record shall be made and maintained within the pharmacy for a period of one year showing:

1. The date of filling of the drug cart;

2. The location of the drug cart;

3. The initials of person who filled the drug cart; and

4. The initials of the pharmacist checking the drug cart.

I. A patient profile record or medication card will be accepted as the dispensing record of the pharmacy for unit dose dispensing systems only, subject to the following conditions:

1. The record of dispensing must be entered on the patient profile record or medication card at the time the drug drawer or tray is filled.

2. In the case of Schedule II through V drugs, after the patient profile record or medication card has been completed, the card must be maintained for two years.

3. In the case of the computer-based distribution system, a uniformly maintained "fill list" or other document may be accepted as the dispensing record for Schedule II through VI drugs. Records of disposition/administration for floor stock drugs as provided in § 10.5.B will be accepted for drugs distributed as floor stock. A separate record for

Schedule VI is not required if disposition records of Schedule II through V are maintained.

PART X.
HOSPITAL PHARMACIES.

§ 10.1. Hospital pharmacies: chart order not a prescription.

A chart order is an order for a medication to be dispensed for an inpatient in a hospital. It is not a prescription order as defined in the Drug Control Act.

§ 10.2. Standards for hospital pharmacies.

A. Hospitals not having a full-time pharmacist, but in which drugs are prepackaged or relabeled or drugs transferred from one container to another, shall obtain a pharmacy permit with a part-time pharmacist designed to perform such functions or to provide personal supervision of such functions.

B. If there is no formally organized pharmacy department, the pharmacy service shall be obtained from another hospital having such a service or from a community pharmacy. Properly labeled and prepackaged drugs may then be distributed from the storage area under the supervision and direction of the pharmacist-in-charge of the service provider.

§ 10.3. Labeling of drugs; preparation and storage of drugs.

A. Labeling.

All medications issued as floor stock shall be labeled with the name of the drug, strength, assigned lot number and expiration date when applicable. In the case of a drug order sent to a nursing unit in a multiple dose container for subsequent administration to a particular patient, the drug shall be labeled with the name and the strength of the drug and the name and the location of the patient.

B. Equipment.

There shall be adequate equipment, properly maintained, and supplies provided to ensure proper professional and administrative services as may be required for patient safety through proper storage, compounding, dispensing, distribution and administration of drugs. When sterile products are prepared in the pharmacy, the product shall be prepared by qualified personnel in the environment of a laminar flow hood.

C. Storage.

All drugs within the pharmacy and throughout the hospital shall be under the supervision of the pharmacist-in-charge. The drugs shall be stored under proper conditions of temperature, light, sanitation and security.

§ 10.4. After-hours access to the pharmacy.

When authorized by the pharmacist-in-charge, a supervisory nurse may have access to the pharmacy in the absence of the pharmacist in order to obtain emergency medication, provided that such drug is available in the manufacturer's original package or in units which have been prepared and labeled by a pharmacist and provided further that a separate record shall be made and left within the pharmacy on a form prescribed by the pharmacist-in-charge and such records are maintained within the pharmacy for a period of one year showing:

1. The date of withdrawal;

2. The patient's name;

3. The name of the drug, strength, dosage form and dose prescribed;

4. Number of doses removed; and

5. The signature of the authorized nurse.

§ 10.5. Floor stock drugs.

A. Proof of delivery.

A delivery receipt shall be obtained for Schedule II through V drugs supplied as floor stock. Receipts shall be maintained in the pharmacy for a period of two years.

B. Distribution records.

A record of disposition/administration shall be used to document administration of Schedule II through V drugs when a floor stock system is used for such drugs. The record shall be returned to the pharmacy within three months of its issue. The pharmacist-in-charge or his designee shall:

1. Match returned records with delivery receipts to verify that all records are returned;

2. Periodically audit returned administration records for completeness as to patient's names, dose, date and time of administration, signature or initials of person administering the drug, and date the record is returned;

3. Verify that all additions to inventory are recorded, that all additions to and deductions from inventory are correctly calculated, that sums carried from one record to the next are correctly recorded, and periodically verify that doses documented on administration records are reflected in the medical record;

4. Initial or sign the returned record and retain for two years from the date of return; and

5. Establish a system of documentation of administration of drugs in all areas where drugs are

stored or administered.

C. Repackaging.

Drugs repackaged for floor stock shall comply with § 5.3.

§ 10.6. Securing the pharmacy.

The pharmacy shall be locked in the absence of a pharmacist prior to, and after, routine hours of operation and shall be secured from access to other personnel except as provided in § 10.4 of these regulations.

§ 10.7. Emergency room.

All drugs in the emergency department shall be under the control and supervision of the pharmacist-in-charge and shall be subject to the following additional requirements:

A. All drugs kept in the emergency room shall be in a secure place from which unauthorized personnel and the general public are excluded.

B. Oral orders for medications shall be reduced to writing and shall be signed by the practitioner.

C. In the emergency room, a medical practitioner may dispense drugs for the immediate need of his patient if permitted to do so by the hospital; the drug container and the labeling shall comply with the requirements of these regulations and the Drug Control Act.

D. A record shall be maintained of all drugs administered in the emergency room.

E. A separate record shall be maintained on all drugs, including drug samples, dispensed in the emergency room. The records shall be maintained for a period of two years showing:

1. Date dispensed;

2. Patient's name;

3. Physician's name;

4. Name of drug dispensed, strength, dosage form, quantity dispensed, and dose.

§ 10.8. Outpatient pharmacy permit.

A. An outpatient pharmacy of a hospital shall be operated under a separate pharmacy permit issued to a specific pharmacy-in-charge of each such operation; if the pharmacy dispensed drugs to walk-in customers who are not patients of the hospital, the outpatient pharmacies shall be governed by laws and regulations as they apply to pharmacies in general and shall be operated in a space separated from the hospital pharmacy.

B. An outpatient pharmacy of a hospital may be operated under the permit of the hospital pharmacy, if the drugs are dispensed only:

1. To patients who receive treatments or consultations on the premises;

2. To inpatients, outpatients, or emergency patients upon discharge for their personal use away from the hospital; and

3. To the hospital employees, medical staff members, or students for personal use or for the use of their dependents.

4. Nothing in this regulation shall prohibit a hospital pharmacy not operated under a separate outpatient pharmacy permit from providing such services or drugs, or both, as are not readily available in the community to patients who may not otherwise be served by the hospital pharmacy.

§ 10.9. Mechanical devices for dispensing drugs.

A hospital may utilize mechanical devices for the dispensing of drugs pursuant to § 54.1-3301 of the Drug Control Act, provided the utilization of such mechanical devices is under the personal supervision of the pharmacist. Such supervision shall include:

A. The packaging and labeling of drugs to be placed in the mechanical dispensing devices. Such packaging and labeling shall conform to all requirements pertaining to containers and label contents.

B. The placing of previously packaged and labeled drug units into the mechanical dispensing device.

C. The removal of the drug from the mechanical device and the final labeling of such drugs after removal from the dispensing device.

D. In the absence of a pharmacist, a person legally qualified to administer drugs may remove drugs from such mechanical device.

§ 10.10. Certified emergency medical technician program.

The pharmacy may prepare a drug kit for a Certified Emergency Medical Technician Program provided:

1. The pharmacist-in-charge of the hospital shall be responsible for all controlled drugs contained in this drug kit.

2. The drug kit is sealed in such a manner that it will preclude any possibility of loss of drugs.

3. Drugs may be administered by a technician upon an oral order of an authorized medical practitioner. The oral order shall be reduced to writing by the

technician and shall be signed by the physician.

4. When the drug kit has been opened, the kit shall be returned to the pharmacy and exchanged for an unopened kit. A record signed by the physician for the drugs administered shall accompany the opened kit when exchanged. An accurate record shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year.

5. The record of the drugs administered shall be maintained as a part of the pharmacy records pursuant to state and federal regulations.

§ 10.11. Identification for interne or resident prescription form in hospitals.

The prescription form for the prescribing of drugs for use by medical interns or residents who prescribe only in a hospital shall bear the prescriber's signature, the legibly printed name, address, and telephone number of the prescriber and an identification number assigned by the hospital. The identification number shall be the Drug Enforcement Administration number assigned to the hospital pharmacy plus a suffix assigned by the institution. The assigned number shall be valid only within the course of duties within the hospital.

PART XI.
PHARMACY SERVICES TO NURSING HOMES.

§ 11.1. Drugs in nursing homes.

Drugs, as defined in the Drug Control Act, shall not be floor stocked by a nursing home, except those in the stat drug box or emergency drug box provided for within these regulations.

§ 11.2. Pharmacist's responsibilities to nursing homes.

The pharmacist serving a nursing home shall ascertain:

A. That a valid order exists prior to the dispensing of any drug.

B. That the drugs for each patient are kept and stored in the originally received containers and that the medication of one patient shall not be transferred to another patient.

C. That each cabinet utilized for the storage of the drugs for individual patients is locked and accessible only to authorized personnel.

D. That the storage area for patients drugs is well lighted, of sufficient size to permit storage without crowding, and is of the appropriate temperature.

E. That poison and drugs for "external use only" are kept in a cabinet and separate from other medications.

F. That discontinued drugs are destroyed under the following conditions:

1. The drugs are destroyed on the premises of the facility.

2. The drugs are destroyed in the presence of the pharmacist supplying pharmacy service to the facility and the director of nurses of the facility.

3. A complete and accurate record of the drugs destroyed shall be maintained and signed by the pharmacist and director of nurses.

4. All destruction of the drugs is done without 30 days of the time the drug was discontinued.

5. The records of destruction shall be made a part of the records on all Schedule II through V drugs administered in the nursing home.

6. This procedure does not apply to discontinued drugs in unit-dose containers which meet U.S.P.-N.F. Class A or Class B container requirements or the manufacturer's sealed containers. Such drugs may be returned to the issuing pharmacist for reuse.

G. That drug reference materials are available on the nursing units.

H. That a monthly review of a drug therapy by a pharmacist is conducted for each patient. Such review shall be used to determine any irregularities. The pharmacist shall sign and date the notation of the review. An irregularity shall include such therapy which is not right and proper, and may include drug interactions or drug administration or transcription errors. All significant irregularities shall be brought to the attention of the attending practitioner or other party having authority to correct the potential problem.

§ 11.3. Emergency drug kit.

The pharmacist may prepare an emergency kit for a facility served by the pharmacy provided:

A. The contents of the emergency kit shall be of such a nature that the absence of the drugs would threaten the survival of the patients.

B. The contents of the kit shall be determined by the Pharmacy and Therapeutics Committee of the institutions and shall be limited to drugs for administration by injection or inhalation only, except that Nitroglycerin SL may be included.

C. The kit is sealed in such a manner that it will preclude any possible loss of the drug.

D. The opened kit is maintained under secure conditions and returned to the pharmacy within 72 hours for

replenishing.

E. Any drug used from the kit shall be covered by a prescription, signed by the physician, when legally required, within 72 hours.

§ 11.4. Stat-drug box.

An additional drug box called a stat-drug box may be prepared by a pharmacy to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy and shall be subject to the following conditions:

A. The box is sealed in such a manner that will preclude the loss of drugs.

B. When the stat-drug box has been opened, it is returned to the pharmacy.

C. Any drug used from the box shall be covered by a drug order signed by the practitioner, when legally required, within 72 hours.

D. There shall not be more than one box per 200 patients in a facility.

E. There shall be a listing of the contents of the box maintained in the pharmacy and also attached to the box in the facility. This same listing shall become a part of the policy and procedure manual of the facility served by the pharmacy.

F. The drug listing on the box shall bear an expiration date for the box. The expiration date shall be the day on which the first drug in the box will expire.

G. Contents of the stat-drug box.

The contents of the box shall be limited to the following classes of drugs, the drug strengths to be selected by the drug committee of the facility in consultation with the providing pharmacist:

1. Antibiotics (injectable) - Not more than five doses of each of four different antibiotics.

2. Antibiotics (oral) - Not more than five doses each of five different antibiotics including two strengths of each antibiotic.

3. Antiemetics - Not more than five doses each of three different antiemetics.

4. Antihistamines - Not more than five doses each of two different antihistamines.

5. Antihypertensives - Not more than five doses each of two different antihypertensives.

6. Antipyretics - Not more than five doses each of two antipyretics.

7. Antipsychotic - Not more than five doses each of five antipsychotics.

8. Diuretics - Not more than five doses each of two diuretics.

9. Antidiarrheals - Not more than five doses of two oral antidiarrheal products.

10. Anticonvulsants - Not more than five doses of two oral anticonvulsants.

11. Analgesics - Not more than five doses of one oral narcotic drug in Schedule III or IV and five doses of one nonnarcotic drug in Schedule III or IV.

PART XII.
OTHER INSTITUTIONS AND FACILITIES.

§ 12.1. Drugs in industrial infirmaries/first aid rooms.

A. Controlled drugs purchased by an institution, agency, or business within the Commonwealth, having been purchased in the name of a practitioner licensed by the Commonwealth of Virginia and who is employed by an institution, agency, or business which does not hold a pharmacy permit, shall be used only for administering to those persons at that institution, agency, or business.

B. All controlled drugs will be maintained and secured in a suitable locked facility, the key to which will be in the possession of the practitioner or nurse who is under the direction and supervision of the practitioner.

C. Such institution, agency, or business shall adopt a specific protocol for the administration of prescription drugs, listing the inventory of such drugs maintained, and authorizing the administering of such drugs in the absence of a physician in an emergency situation when the timely prior verbal or written order of a physician is not possible. Administering of such drugs shall be followed by written orders.

1. For the purpose of this regulation, emergency shall be defined as a circumstance requiring administration of controlled drugs necessary to preserve life or to prevent significant or permanent injury or disability.

2. The protocol shall be maintained for inspection and documentation purposes.

D. A nurse may, in the absence of a practitioner, administer nonprescription drugs and provide same in unit dose containers in quantities which in the professional judgment of the nurse and the existing circumstances will maintain the person at an optimal comfort level until the employee's personal practitioner can be consulted. The administering and providing of such medication must be in accordance with explicit instructions of a specific protocol promulgated by the practitioner in charge of the institution, agency, or business.

§ 12.2. Licensed humane societies and animal shelters; use of pentobarbital.

A humane society or animal shelter, after having obtained the proper permits pursuant to state and federal laws, may purchase, possess and administer Sodium Pentobarbital to euthanize injured, sick, homeless and unwanted domestic pets and animals provided that:

1. The facility shall be under the general supervision of a veterinarian.

2. The person(s) responsible for administering the drug shall have been trained by a veterinarian in the manner of administration.

3. The drug shall be stored in a secure place and only the person responsible for administering the drug may have access to the drug.

4. The drug shall be obtained and administered in the injectable form only.

5. All invoices and order forms shall be maintained for a period of two years.

6. Complete and accurate records shall be maintained on the administration of the drug; the record shall show the date of administration, the species of the animal, the weight of animal, the amount of drug administered and signature of the person administering the drug.

§ 12.3. Drugs in correctional institutions.

All prescription drugs at any correctional unit shall be obtained only on an individual prescription basis from a pharmacy and subject to the following conditions:

1. The prescription orders shall be initiated by the physician or his agent.

2. The number of doses on each prescription order shall be specified.

3. All prepared drugs shall be maintained in a suitable locked facilty with only the person responsible for administering the drugs having access.

4. All drugs shall be taken in the presence of the person administering the drug.

5. Drug administration record. Complete and accurate records shall be maintained on all drugs received, administered and discontinued. This record shall consist of a two-part drug administration record. The administration record shall show the:

a. Prescription number;

b. Drug name and strength;

c. Number of dosage units received;

d. Physician's name; and

e. Date, time and signature of person administering the individual dose of drug.

6. Disposal of unused drugs. All unused or discontinued drugs shall be sealed and the amount in the container at the time of the sealing shall be recorded on the drug administration record. Such drugs shall be returned to the provider pharmacy along with Part 2 of the drug administration record within seven days. The drug shall be returned by the same means as it was originally sent.

a. The provider pharmacy shall compare the number of drug dosage units dispensed against Part 2 of the drug administration record, the number of dosage units administered and the number of dosage units returned to the issuing pharmacy.

b. The drug administration records shall be filed in chronological order by the provider pharmacy and maintained for a period of one year or, at the option of the facility, the records may be returned by the provider pharmacy to the facility.

c. The returned drugs shall be destroyed at least every 30 days. This destruction shall be carried out by the provider pharmacy and a responsible witness. The Board of Pharmacy shall be notified two weeks prior to the destruction in order that the board may witness any such destruction. An agent of the board shall, from time to time, witness a destruction of such drugs and, prior to the destruction, randomly reconcile the contents of selected containers against the drug administration record.

d. Drugs in the manufacturer's original sealed container may be returned to the stocks of the provider pharmacy.

7. Emergency and stat-drug box.

An emergency box and a stat-drug box may be prepared for the facility served by the pharmacy pursuant to §§ 11.3 and 11.4 of the regulations provided:

a. The facility employs one or more full-time physicians, registered nurse, licensed practical nurse or correctional health assistant;

b. No drugs are to be administered from the emergency box or stat-drug box unless authorized by the physician either in writing or orally. If orally, the order must be signed by the physician within 72 hours.

c. Only the physician, nurse, licensed practical nurse

or correctional health assistant may administer a drug from the emergency box or stat-drug box.

d. The emergency drug box or stat-drug box must be sealed in such a manner that it will preclude any possibility of loss of drugs. Any drug box which has been opened must be returned to the pharmacy within 72 hours.

PART XIII.
EXEMPTED STIMULANT OR DEPRESSANT DRUGS AND CHEMICAL PREPARATIONS.

§ 13.1. Excluded substances.

The list of excluded substances, which may be lawfully sold over the counter without a prescription under the Federal Food, Drug and Cosmetic Control Act (21.U.S.C. 301), as set forth in the Code of Federal Regulations, Title 21, Part 1308.22, is adopted pursuant to the authority set forth in §§ 54.1-3448, 54.1-3450 and 54.1-3452 of the Drug Control Act.

§ 13.2. Exempted chemical preparations.

The list of exempt chemical preparations set forth in the Code of Federal Regulations, Title 21, Part 1308.24 is adopted pursuant to the authority set forth in §§ 54.1-3443, 54.1-3450 and 54.1-3452 of the Drug Control Act.

§ 13.3. Excepted compounds.

The list of excepted compounds set forth in the Code of Federal Regulations, Title 21, Part 1308.32 is adopted pursuant to the authority set forth in §§ 54.1-3443, 54.1-3450 and 54.1-3452; the excepted compounds are drugs which are subject to the provisions of § 54.1-3455 of the Drug Control Act.

PART XIV.
MANUFACTURERS, ~~WHOLESALERS, AND~~ *WHOLESALE* DISTRIBUTORS , *WAREHOUSERS, AND MEDICAL EQUIPMENT SUPPLIERS.*

§ 14.1. ~~Manufacturers, wholesalers and distributors~~ *Licenses and permits generally .*

A *license or* permit shall not be issued to any manufacturer ~~or~~ , *wholesale* distributor , *warehouser, or medical equipment supplier* to operate from a private dwelling, unless a separate *business* entrance is provided, and the place of business is open for inspection at all times during normal business hours. ~~In any case,~~ *The applicant shall comply with* all other *federal,* state and local laws and ordinances ~~shall be complied with~~ before any *license or* permit is issued.

§ 14.2. ~~Manufacturers and wholesalers~~ Safeguards against diversion of drugs.

The following requirements shall ~~comply~~ *apply* to manufacturers ~~or wholesaler~~ , *wholesale distributors, or warehousers* of *prescription* drugs:

1. The holder of the permit shall restrict all areas in which ~~Schedule II-V~~ *prescription* drugs are manufactured, stored, or kept for sale, to ~~a limited number of~~ *only* designated and necessary persons.

2. The holder of the permit shall ~~take~~ *provide* reasonable *security* measures ~~to prevent any person from pilfering~~ *for all* drugs ~~from~~ *in* the restricted area.

3. The holder of the permit shall not deliver any drug to a licensed business at which there is no one in attendance at the time of the delivery nor to any person who may not legally ~~process~~ *possess* such drugs.

4. The holder of ~~a~~ *the* permit ~~to manufacture or wholesale only Schedule VI drugs~~ shall comply with the security requirements set forth in § 3.8.

5. This regulation shall not apply to the holder of a permit to manufacture or ~~wholesale~~ *distribute only* medical gases.

§ 14.3. Manufacturing of cosmetics.

~~A.~~ The building in which cosmetics are manufactured, processed, packaged and labeled, or held shall be maintained in a clean and orderly manner and shall be of suitable size, construction and location in relation to surroundings to facilitate maintenance and operation for their intended purpose. The building shall:

1. Provide adequate space for the orderly placement of equipment and materials used.

2. Provide adequate lighting and ventilation.

3. Provide adequate washing, cleaning, and toilet facilities.

~~PART XV.~~
~~GOOD MANUFACTURING PRACTICES.~~

~~§ 15.1.~~ *§ 14.4.* Good manufacturing practices.

A. The Good Manufacturing Practices regulations set forth in the Code of Federal Regulations, Title 21, Part 211 and effective April 1, 1986, are adopted by reference.

B. Each manufacturer of drugs shall comply with the requirements set forth in the federal regulations referred to in subsection A of this section.

§ 14.5. Prescription drug marketing act.

A. The requirements for wholesale distribution of prescription drugs set forth in the federal Prescription

Drug Marketing Act of 1987 and Title 21, Part 205 of the Code of Federal Regulations are adopted by reference.

B. Each wholesale distributor of prescription drugs shall comply with minimum requirements for qualifications, personnel, storage, handling, and records as set forth in the federal regulations referred to in subsection A of this section.

§ 14.6. Medical equipment suppliers.

A. A medical equipment supplier may dispense to the ultimate consumer the following: prescription devices, medicinal oxygen, Schedule VI drugs which have no medicinal properties and are used in the operation and cleaning of medical devices, and hypodermic needles and syringes as authorized by § 54.1-3435.3 of the Drug Control Act.

B. A medical equipment supplier shall receive a valid order from a practitioner prior to dispensing and shall maintain this order on file for a period of two years from date of last dispensing.

C. Medical equipment suppliers shall make a record at the time of dispensing. This record shall be maintained for two years from date of dispensing and shall include:

1. Name and address of patient;

2. Name and address of physician ordering;

3. Item dispensed and quantity, if applicable; and

4. Date of dispensing.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: **VR 115-04-28. Emergency Regulations Governing the Oxygenation of Gasoline.**

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Effective Dates: November 1, 1992 through October 31, 1993.

Preamble:

Section 59.1-156 of the Code of Virginia (1950), as amended, authorizes the Board of Agriculture and Consumer Services to "make all necessary rules and regulations for, ... (ii) assuring that motor fuels dispensed in this Commonwealth comply with any oxygenation requirements specified by the federal Clean Air Act or any other federal environmental requirement pertaining to motor fuels;..." The 1990 amendments to the federal Clean Air Act require states with carbon monoxide nonattainment areas with design values [1] of 9.5 parts per million (ppm) or more to implement an oxygenated gasoline program in all such designated nonattainment areas. The Department of Air Pollution Control has designated the County of Arlington and the City of Alexandria as carbon monoxide nonattainment areas pursuant to Title II of the 1990 Amendments to the federal Clean Air Act (hereinafter "Title II"), as design values of carbon monoxide exceed 9.5 ppm in such areas. Title II requires that states institute an oxygenated gasoline program by establishing "control areas" in any Metropolitan Statistical Area (MSA) which contains one or more carbon monoxide nonattainment areas. Pursuant to such provisions, the Department of Air Pollution Control has designated as the control area the area so defined in § 1 below.

This oxygen content requirement applies during the portion of the year in which the control area is prone to high ambient concentrations of carbon monoxide. The Environmental Protection Agency has established this control period (which the Board of Agriculture and Consumer Services anticipates will recur annually) to be, in the case of Virginia, a specified four months out of twelve. In Virginia this control period will begin on November 1 of one year and continue through the last day of February of the following year.

The use of oxygenated gasoline in lieu of non-oxygenated gasoline reduces carbon monoxide emissions from motor vehicles and, thereby, helps carbon monoxide nonattainment areas in their efforts to achieve compliance with the national ambient air quality standard for carbon monoxide. The use of oxygenated gasoline is becoming a widely recognized control strategy for reducing carbon monoxide emissions from motor vehicles in a timely and cost-effective manner.

There are sanctions associated with the failure to adopt a regulation to require the oxygenation of gasoline. If the Administrator of the Environmental Protection Agency finds that a state has failed to adopt the necessary regulation, then the state will be subject to sanctions. The sanctions include loss of federal funds, including funds for highways.

[1] Design value means the calculation which is used to derive the number of carbon monoxide parts per million in the air in order to determine whether an area shall be designated a carbon monoxide nonattainment area.

VR 115-04-28. Emergency Regulations Governing the Oxygenation of Gasoline.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the Administrator of the [United States] Environmental Protection Agency.[1]

"ASTM" means the American Society for Testing and Materials.

"Batch" means any discrete amount of gasoline.

"Blender" means any person who owns, leases, operates, controls, or supervises an oxygenate blending facility.

"Bulk gasoline plant operator" means any person who owns, leases, operates, or controls a plant which is a secondary distribution point for delivering gasoline to local farms, businesses, service stations, and other distribution points, where the total gasoline throughput is 20,000 gallons or less per working day, based on the daily average for the most recent 12-month period.

"Bulk gasoline terminal operator" means any person who owns, leases, operates, or controls a terminal which is a primary distribution point for delivering gasoline to bulk plants, service stations, and other distribution points, where the total gasoline throughput is greater than 20,000 gallons per working day, based on the daily average for the most recent 12-month period.

"Control area" means the Virginia counties within the Washington, D.C. Metropolitan Statistical Area (MSA) consisting of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the Virginia cities within the Washington, D.C. MSA consisting of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

"Control period" means a specified four months out of twelve, beginning on November 1 of one year and

continuing through the last day of February of the following year.

"Owner" means any person who owns or controls any batch of gasoline.

"Oxygenate" means any substance or substances which, when added to gasoline, increases the amount of oxygen in that gasoline blend.

"Oxygenated gasoline" means gasoline which contains a measurable amount of oxygenate. [2]

"Person" includes an individual, corporation, partnership, association, State, municipality, political sub-division of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof. [3]

"Record" means any document which takes the form of, but is not limited to, a bill of lading, invoice, receipt, commodity manifest, or delivery ticket.

"Retail outlet operator" means any person who owns, leases, operates, or controls any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in a motor vehicle.

"Sell or transfer" means to sell, exchange, ship, receive, or to offer or expose for sale.

"Substantially similar" means "substantially similar" as stated in § 211 (f) (1) of the federal Clean Air Act, 42 USC § 7545 (f) (1).

"Terminal operator" means any person who owns, leases, operates or controls a gasoline terminal at which gasoline is sold and dispensed into trucks or other containers for transportation to retail outlets or wholesale purchaser-consumer facilities, and shall include, but not be limited to, any bulk gasoline plant operator and any bulk gasoline terminal operator.

"Ultimate consumer" means any person who purchases gasoline for any purpose other than resale.

"Wholesale purchaser-consumer" means any person who is an ultimate consumer of gasoline and who purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of gasoline into a storage tank or other gasoline container.

"Wholesale purchaser-consumer facility" means any facility at which a wholesale purchaser-consumer stores gasoline in a storage tank or other gasoline container.

§ 2. Exception for aircraft.

Nothing in this regulation shall apply to any person who sells or transfers any batch of gasoline for use in aircraft.

§ 3. Minimum oxygenate content

No person may sell or transfer gasoline to a retail outlet operator or wholesale purchaser-consumer who, is within the control area during a control period, unless the gasoline contains a minimum of 2.7 percent oxygen by weight as determined in accordance with § 7 of this regulation.

§ 4. Nature of oxygenates

(A) No person may sell or transfer gasoline to a retail outlet operator or wholesale purchaser-consumer located in the control area during a control period unless such gasoline contains an oxygenate which is:

(i) of the type and quality allowed under the federal Clean Air Act;

(ii) of a type "substantially similar" under § 211 (f) (1) of the federal Clean Air Act, 42 USC § 7545(f) (1); or

(iii) approved through the waiver granted under § 211 (f) (4) of the federal Clean Air Act, 42 USC § 7545(f) (4).

(B). (i) No person may sell or transfer to a retail outlet operator or wholesale purchaser-consumer located in the control area during a control period gasoline that exceeds the maximum oxygen content specified by the "substantially similar" definition of § 211 (f) (1) of the federal Clean Air Act, 42 USC § 7545(f) (1), unless such gasoline is approved through the waiver ("the waiver") granted by the Administrator under the authority of § 211 (f) (4) of the federal Clean Air Act, 42 USC § 7545(f) (1);

(ii) No person may sell or transfer to a retail outlet operator or wholesale purchaser-consumer located in the control area during the control period gasoline approved through the waiver unless the oxygen content of such gasoline is no more than that specified by the waiver.

(C) No person may use any oxygenate unless it is "substantially similar" as defined by this regulation, or unless it is approved through the waiver.

§ 5. Record keeping and transfer requirements.

(A) (1) Any terminal operator who ships or causes to have shipped gasoline to or within the control area during a control period shall make a record, to be made no later than the time of shipment of the gasoline. Any person who ships the gasoline to or within the control area during a control period shall carry a copy of the record made by the terminal operator. The terminal operator shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, a copy the record and shall make such record available for inspection by the Commissioner. Such record shall

contain for each batch of gasoline leaving the terminal operator: (i) the volume of gasoline, the type of oxygenate in the gasoline, if any, and the oxygen content, if any, of the batch of gasoline leaving the terminal operator; (ii) a declaration of whether the destination of the batch of gasoline leaving the terminal operator is within the control area or not; and (iii) the name and address of the person to whom the terminal operator shipped the batch of gasoline and the date of such shipment;

(2) Any blender who ships or causes to have shipped gasoline to or within the control area during a control period shall make a record, to be made no later than the time of shipment of the gasoline. Any person who ships the gasoline to or within the control area during a control period shall carry a copy of the record made by the terminal operator. The blender shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, a copy of the record and shall make such record available for inspection by the Commissioner. Such record shall contain for each batch of gasoline leaving the blender: (i) the volume of gasoline, the type of oxygenate in the gasoline, if any, and the oxygen content, if any, of the batch of gasoline leaving the blender; (ii) a declaration of whether the destination of the batch of gasoline leaving the blender is within the control area or not; and (iii) the name and address of the person to whom the blender shipped the gasoline and the date of the shipment;

(3) Any retail outlet operator who purchases or receives the gasoline and record specified in § 5 (A) (1) or § 5 (A) (2) of this regulation shall retain the record for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, and shall make such record available for inspection by the Commissioner.

(4) Any wholesale purchaser-consumer who purchases or receives the gasoline and record specified in § 5 (A) (1) or § 5 (A) (2) of this regulation shall retain the record for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, and shall make such record available for inspection by the Commissioner.

(B) Any blender or terminal operator who ships or causes to have shipped gasoline destined for the control area during a control period other than to be sold to a retail outlet operator or a wholesale purchaser-consumer shall make a record, to be made no later than the time of shipment of the gasoline. Any person who ships the gasoline destined for the control area during a control period shall carry a copy of the record made by the blender or terminal operator. The blender or the terminal operator shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is sooner, a copy of the record and shall make such record available for inspection by the Commissioner. Such record shall contain for each batch of gasoline shipped the following information:

(1) The date of the shipment of the gasoline;

(2) The name and address of the blender or terminal operator shipping or causing to have shipped the gasoline and where the blender or terminal operator is not the person shipping the gasoline, the name and address of the person shipping the gasoline;

(3) The name and address of the recipient of the gasoline;

(4) The volume of gasoline shipped;

(5) The identification of the gasoline as non-oxygenated or oxygenated; and

(6) The type of oxygenate used in the gasoline, if any, and the oxygen content of the gasoline, if any, required by § 3 of this regulation.

The person shipped the gasoline destined for the control area during a control period shall provide the recipient of the gasoline with a copy of the record required by § 5 (B) of this regulation upon delivery of the gasoline to the recipient. The recipient shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, a copy of the record and shall make such record available for inspection by the Commissioner.

§ 6. Gasoline pump labeling.

(A) The retail outlet operator shall post a label on any gasoline pump located in the control area from which gasoline is dispensed and which is operated by the retail outlet operator. The retailer shall ensure that the label remains permanently affixed to the gasoline pump. The label shall be worded as follows:

"The following statement is applicable only from November 1 through the last day of February: 'The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.'"

(B) The retail outlet operator shall post the label required by § 6 (A) of this regulation in block letters of no smaller than 20-point bold type, in a color contrasting with the background. The label shall be placed in the upper two-thirds of the front panel of the gasoline pump on the vertical surface of the same side as the price and gallonage or quantity display of the gasoline pump in a position plain and conspicuous from the driver's position.

(C) The retail outlet operator shall also label the pump with:

1. The brand name, trademark or trade name of the

motor fuel it contains;

2. The grade, blend or mixture of the motor fuel it contains;

3. The octane . . . rating of the motor fuel it contains; and

4. If the product contains one percent or more ethanol or methanol, information identifying the kind of alcohol and the percentage of each at the time of blending, in letters not less than one inch in height. [4]

§ 7. Sampling, testing, and oxygen content calculations.

(A) Sampling methodologies used to determine compliance with this regulation shall be those set forth in Appendix D, 40 CFR Part 80, which is hereby adopted by reference.

(B) Determination of the oxygenate and its weight and volume in gasoline shall be in accordance with test method ASTM D 4815-89 as set forth in ASTM specification D 4814 or other methods developed or approved by the United State Environmental Protection Agency.

(C) Oxygen content shall be calculated by multiplying the mass concentration of each oxygenate in gasoline by the oxygen molecular weight contributor of the oxygenate. All volume measurements shall be adjusted to 60 degrees Fahrenheit. For the purpose of calculating oxygen content, the following oxygen molecular weight contributions shall be used:

Oxygenate	Oxygen Mass Fraction	Relative Density 60/60 degrees F
Methyl Alcohol	0.4993	0.7963
Ethyl Alcohol	0.3473	0.7939
n-Propyl Alcohol	0.2662	0.8080
Isopropyl Alcohol	0.2662	0.7899
n-Butyl Alcohol	0.2158	0.8137
Isobutyl Alcohol	0.2158	0.8058
sec-Butyl Alcohol	0.2158	0.8114
tertiary-Butyl Alcohol	0.2158	0.7922 [5]
Methyl tertiary-Butyl Ether	0.1815	0.7460
Ethyl tertiary-Butyl Ether	0.1566	0.7452
tertiary-Amyl Methyl Ether	0.1566	0.7752
tertiary-Hexyl Methyl Ether	0.1377	0.7860
Dilso propyl ether	0.1566	0.7300

(D) Phase Separation. Oxygenated gasoline shall consist of a single homogenous mixture, presenting no indication of phase separation when tested in accordance with the test method described in Annex A3 of ASTM Specification D-4814.

(1) -8°C (17°F) during the month of January.

(2) -7°C (19°F) during the month of February.

(3) -3°C (26°F) during the month of March.

(4) 3°C (37°F) during the month of April.

(5) 9°C (48°F) during the month of May.

(6) 10°C (50°F) during the months of June, July, August, and September.

(7) 4°C (39°F) during the month of October.

(8) -2°C (28°F) during the month of November.

(9) -7°C (19°F) during the month of December.

§ 8. Compliance and enforcement.

(A) Any retail outlet operator or wholesale purchaser-consumer will be deemed in compliance with the requirements of this regulation during a transitional period comprising the first ten days of the control period, provided that for all deliveries of gasoline during the five days immediately preceding the control period the gasoline delivered to that retail outlet operator or wholesale purchaser-consumer complies with the minimum oxygenate content specified by § 3 of this regulation.

(B) Any retail outlet operator or wholesale purchaser-consumer who purchases or receives and offers for sale gasoline found not to be in compliance with the requirements of this regulation will be subject to having such gasoline ordered off sale or removed from use by the Commissioner. After such ordering off sale or removal from use, the retail outlet operator or wholesale purchaser-consumer may:

(i) Re-offer for sale gasoline that has been ordered off sale or removed from use, provided that prior to such re-offering for sale such gasoline has been blended by any person with additional oxygenates sufficient to comply with the minimum oxygenate content specified by § 3 of this regulation, and provided that prior to such re-offering for sale the sampling taken by the Commissioner meets the minimum oxygenate content specified by § 3 of this regulation;

(ii) Sell or transfer gasoline for use outside the control area that has been ordered off sale or removed from use, provided that the retail outlet operator or wholesale purchaser-consumer complies with the record keeping requirements of § 5 (A) (3) (in the case of the retail outlet operator) and § 5 (A) (4) (in the case of the wholesale purchaser-consumer) of this regulation, and provided that prior to the sale or transfer the retail outlet operator or wholesale purchaser-consumer provides the Commissioner with an affidavit stating that the retail outlet operator or the wholesale purchaser-consumer will not sell or transfer the gasoline in or to the control area during the control period, and also stating the proposed disposition of the gasoline; or

(iii) Have gasoline that has been ordered off sale or removed from use released and returned to the retail outlet operator or wholesale purchaser-consumer by the Commissioner, provided that prior to such release the retail outlet operator or wholesale purchaser-consumer provides the Commissioner with an affidavit stating that the retail outlet operator or wholesale purchaser-consumer will not sell or transfer the gasoline in or to the control area during the control period, and also stating the proposed disposition of the gasoline.

.....

[1] Clean Air Act § 302(a), 42 USC § 7602(a)

[2] Proposed federal regulation as contained in Federal Register July 9, 1991. The placement of this definition as proposed in the Federal Register would be at 40 CFR § 80.2 [oo]

[3] Clean Air Act § 302(e), 42 USC § 7602(e)

[4] From § 59.1-167.1(A) Code of Virginia
[5] Extrapolated, below freezing temperature

.....

Adopted by the Board of Agriculture and Consumer Services on September 30, 1992. This is a full, true, and correctly dated regulation.

/s/ Roy E. Seward, Secretary
Board of Agriculture and Consumer Services
Date: October 1, 1992

/s/ Clinton V. Turner, Commissioner
Virginia Department of Agriculture
and Consumer Services
Date: October 2, 1992

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: October 15, 1992

/s/ Lawrence Douglas Wilder
Governor
Date: October 23, 1992

/s/ Joan W. Smith
Registrar of Regulations
Date: October 26, 1992

STATE CORPORATION COMMISSION

October 15, 1992

Administrative Letter 1992-20

TO: All Insurers Licensed to Market Life Insurance and Annuities in Virginia

RE: House Bill 660 - Effective July 1, 1992
Modified Guaranteed Life Insurance and Modified Guaranteed Annuities

The 1992 Virginia General Assembly passed House Bill 660, a copy of which is attached for your review. This bill provides definitions of modified guaranteed life insurance and annuities as well as providing requirements for investments, separate accounts and the authority to issue these contracts. Section 38.2-3113.1.D. of the Code of Virginia provides that an insurer must satisfy the Commission "that its condition and methods of operation in connection with the issuance of modified guaranteed contracts will not render its operation hazardous to the public or to its policyholders in this Commonwealth." The qualifications an insurer must meet in order to be licensed are also set forth in this subsection.

I am aware that some insurers have submitted policy forms covered by this bill prior to July 1, 1992 and that they have been approved or filed by the Bureau of Insurance. After extensive review, I have determined that these forms should not continue to be marketed in Virginia until the insurer issuing these contracts is granted specific authority to do so as provided in Section 38.2-3113.1.D. of the Code of Virginia.

In view of this, I am notifying you that as of December 15, 1992, approval or filing of all modified guaranteed life insurance and annuity forms is withdrawn as provided in Section 38.2-316.F. of the Code of Virginia. In order for forms to be marketed subsequent to December 15, 1992, your company must apply for and receive specific authority to market modified guaranteed life and annuity contracts, and your forms must be reviewed and approved pursuant to the requirements of House Bill 660 and any regulations issued by the State Corporation Commission.

IT IS VERY IMPORTANT THAT THE ATTACHED SURVEY BE COMPLETED, SIGNED BY AN OFFICER OF YOUR COMPANY, AND RETURNED TO US NO LATER THAN NOVEMBER 15, 1992.

Questions regarding the implementation of this letter should be addressed, in writing, to the appropriate person named below.

Policy Form Questions

Mr. Robert L. Wright
Supervisor
Life and Health Forms and Rates Section
State Corporation Commission
Bureau of Insurance
P. O. Box 1157
Richmond, Virginia 23209

Licensing Questions

Mr. Andy Delbridge
Supervisor
Company Licensing Section
Bureau of Insurance
State Corporation Commission
P. O. Box 1157
Richmond, Virginia 23209

/s/ Steven T. Foster
Commissioner of Insurance

Survey

Name of Company _____

Address _____

_____

_____

Name of Officer of Company Certifying the Information in this Survey:

Signature _____

Title _____

Telephone _____

1. Has your company received approval or had modified life insurance or modified guaranteed annuity forms filed for informational purposes in Virginia.

Yes _____ No _____

Please provide form numbers
and approval dates.

Please Return This Survey To:

Mr. Robert L. Wright, CLU, CIE
Supervisor, Forms and Rates Section
Life and Health Division
Bureau of Insurance
P. O. Box 1157
Richmond, Virginia 23209

RESPONSE IS REQUIRED NO LATER THAN NOVEMBER 15, 1992.

1992 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 210

An Act to amend and reenact §§ 38.2-102, 38.2-106 and 38.2-3219 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 38.2-105.1, 38.2-107.1, 38.2-1443.1 and 38.2-3113.1, relating to modified guaranteed life and modified guaranteed annuity insurance contracts.

[H 660]

Approved MAR 5 1992

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-102, 38.2-106 and 38.2-3219 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 38.2-105.1, 38.2-107.1, 38.2-1443.1 and 38.2-3113.1 as follows:

§ 38.2-102. Life.—"Life insurance" means insurance upon the lives of human beings. "Life insurance" includes policies that also provide (i) endowment benefits; (ii) additional benefits in the event of death, dismemberment, or loss of sight by accident or accidental means; (iii) additional benefits to safeguard the contract from lapse or to provide a special surrender value, a special benefit or an annuity, in the event of total and permanent disability of the insured; and (iv) optional modes of settlement of proceeds. As used in this title, unless the context requires otherwise, "life insurance" shall be deemed to include "credit life insurance," "industrial life insurance," ~~and~~"variable life insurance " *and "modified guaranteed life insurance ."*

§ 38.2-105.1. Modified guaranteed life insurance.—"Modified guaranteed life insurance" means any policy or contract of life insurance in which the benefits are guaranteed if held for specified periods and nonforfeiture values are based upon a market-value adjustment formula if held for shorter periods. The formula may or may not reflect the investment experience of any separate account which may be maintained by the insurer for the policy or contract as provided for in § 38.2-3113.1.

§ 38.2-106. Annuities.—"Annuities" means all agreements to make periodic payments in fixed dollar amounts pursuant to the terms of a contract for a stated period of time or for the life of the person or persons specified in the contract. "Annuities" does not include contracts defined in § 38.2-102.

As used in this title, unless the context requires otherwise, "annuity" shall be deemed to include "variable annuity " *and "modified guaranteed annuity ."*

§ 38.2-107.1. Modified guaranteed annuity.—"Modified guaranteed annuity" means any agreement or contract for an annuity in which the benefits are guaranteed if held for specified periods and nonforfeiture values are based upon a market-value adjustment formula if held for shorter periods. The formula may or may not reflect the investment experience of any separate account which may be maintained by the insurer for the agreement or contract as provided for in § 38.2-3113.1.

§ 38.2-1443.1. Investment of amounts allocated to separate accounts for modified guaranteed life insurance and modified guaranteed annuities.—A. Unless otherwise provided by regulation, the amounts allocated to separate accounts for modified guaranteed life insurance and modified guaranteed annuities, pursuant to the provisions of § 38.2-3113.1, and accumulations on them, may be invested and reinvested by a domestic insurer in any type of Category 1 investment.

B. Investments made pursuant to this section shall be taken into account in applying the investment limitations of §§ 38.2-1413 and 38.2-1414 to investments made by the insurer, by combining the investments under this section with all other investments subject to such limitations. In addition to the general account meeting these investment limitations, both the separate account and the general account together shall meet these investment limitations. The limitations of §§ 38.2-1413 and 38.2-1414 shall not otherwise apply to investments made pursuant to this section.

§ 38.2-3113.1. Modified guaranteed life insurance and modified guaranteed annuities; separate accounts; authority to issue; statements required; regulations to be issued; approval expenses.—A. For purposes of this section, "modified guaranteed contracts" means modified guaranteed life insurance or modified guaranteed annuity contracts. The provisions of this section apply only to such contracts.

B. A domestic insurer that issues modified guaranteed contracts may establish one or more separate accounts in connection with these types of contracts. All amounts received by the insurer to provide benefits under contracts for which separate accounts have been

established shall be added to the appropriate separate account. Unless provided otherwise in the contract and approved by the Commission in its discretion, the assets of any such separate account shall be chargeable with liabilities arising out of any other business the insurer may conduct.

C. A foreign or alien insurer licensed to do business in this Commonwealth may be licensed to deliver or issue for delivery modified guaranteed contracts in this Commonwealth only if authorized to issue such contracts under the laws of its domicile.

D. No domestic, foreign, or alien insurer shall be licensed to deliver or issue for delivery modified guaranteed contracts in this Commonwealth, until the insurer has satisfied the Commission that its condition and methods of operation in connection with the issuance of modified guaranteed contracts will not render its operation hazardous to the public or to its policyholders in this Commonwealth. In determining the qualifications of an insurer to deliver or issue for delivery such modified guaranteed contracts in this Commonwealth, the Commission shall consider, but shall not be limited to considering, the following: (i) the history and financial condition of the insurer; (ii) the character, responsibility, and general fitness of the officers and directors of the insurer; and (iii) in the case of a foreign or alien insurer, whether the regulation provided by the laws of its domicile provides a degree of protection to policyholders and the public substantially equal to that provided by this section and any rules and regulations issued by the Commission.

E. Each insurer that has established any separate accounts in connection with modified guaranteed contracts, and delivers or issues for delivery modified guaranteed contracts in this Commonwealth shall file with the Commission, in addition to the annual statement required by § 38.2-1300, any other periodic or special reports the Commission prescribes.

F. Any modified guaranteed contract delivered or issued for delivery in this Commonwealth, and any certificate evidencing nonforfeiture benefits that vary according to a market-value adjustment formula issued pursuant to any life insurance or annuity contract issued on a group basis shall (i) contain, on its first page, a prominent statement that the nonforfeiture values may increase or decrease, based on the market-value adjustment formula in the contract, and (ii) for modified guaranteed life insurance only, be accompanied by a written disclosure to the purchaser of the policy's "interest adjusted net cost index" in compliance with regulations or forms approved by the Commission.

G. The Commission may promulgate reasonable regulations applicable to modified guaranteed contracts and to any separate accounts that may be established in connection with such contracts.

H. Reasonable actuarial expenses incurred in connection with approval of a modified contract shall be paid by the person seeking approval of such a contract.

§ 38.2-3219. Applicability.—Sections ~~38.2-3219~~ *38.2-3220* through 38.2-3229 shall not apply to any (i) reinsurance; (ii) group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under § 408 of the Internal Revenue Code, as amended; (iii) premium deposit fund; (iv) variable annuity; (v) investment annuity; (vi) immediate annuity; (vii) deferred annuity contract after annuity payments have commenced; (viii) reversionary annuity; ~~or~~ (ix) *modified guaranteed annuity; or (x)* contract delivered outside this Commonwealth through an agent or other representative of the insurer issuing the contract.

DIRECTOR'S ORDER NUMBER TWENTY-FIVE (92)

"SEASON'S GREENINGS"; VIRGINIA LOTTERY RETAILER CASHING PROMOTIONAL PROGRAM RULES.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Seasons's Greenings" Virginia Lottery Retailer Cashing Promotional Program Rules for the lottery retailer incentive program which will be conducted from Monday, November 2, 1992 through Monday, January 4, 1993. These rules amplify and conform to the duly adopted State Lottery Board regulations.

These rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

Kenneth W. Thorson
Director
Date: October 19, 1992

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulations:
VR 125-01-2. Advertising.
VR 125-01-3. Tied House.
VR 125-01-4. Requirements for Product Approval.
VR 125-01-5. Retail Operations.
VR 125-01-7. Other Provisions.

Governor's Comment:

I have no objections to these regulations being submitted through the regulatory process; however, I will withhold my opinion on the propriety of the regulations pending the public's opportunity to submit and my opportunity to review their comments.

/s/ Lawrence Douglas Wilder
Governor
Date: October 28, 1992

DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: **VR 485-10-9101. Commercial Driver Training School Regulations. REPEAL.**

Title of Regulation: **VR 485-60-9201. Commercial Driver Training Schools Regulations.**

Governor's Comment:

Pending public comment and review, I approve these regulations which will improve the efficiency of commerce in the Commonwealth.

/s/ Lawrence Douglas Wilder
Governor
Date: October 20, 1992

BOARD OF PHARMACY

Title of Regulation: **VR 530-01-1. Regulations of the Virginia Board of Pharmacy.**

Governor's Comment:

I concur with the form and the content of this proposal. My final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: October 23, 1992

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-01-49. Aid to Families with Dependent Children (AFDC) Program - Disqualification for Intentional Program Violation.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: October 22, 1992

DEPARTMENT OF WASTE MANAGEMENT

Title of Regulation: **VR 672-10-1. Hazardous Waste Management Regulations.**

Governor's Comment:

The proposal would confirm state regulations with federal statutes and regulations. This conformity is necessary to maintain primacy for the hazardous waste management program. I recommend approval pending public comment.

/s/ Lawrence Douglas Wilder
Governor
Date: October 21, 1992

* * * * * * * * *

Title of Regulation: **VR 672-20-10. Virginia Solid Waste Management Regulations.**

Governor's Comment:

The proposal would conform state regulations with federal standards and enhance the administrative efficiency of the state's waste management efforts. Pending public comment, I recommend approval.

/s/ Lawrence Douglas Wilder
Governor
Date: October 21, 1992

Symbol Key †
† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

NOTICE

Notices of Intended Regulatory Action are published as a separate section at the beginning of each issue of the Virginia Register.

DEPARTMENT OF HEALTH

Alternative Discharging Regulations

The Virginia Department of Health is soliciting public comment on the Alternative Discharging Sewage Treatment Regulations, VR 355-34-400 adopted July 30, 1992. Five public hearings were held between May 18, 1992 and June 10, 1992 on these regulations. During this time the Department of Health heard and responded to many concerns of citizens and special interest groups.

After the public comment period, it became increasingly apparent that several specific issues in the regulations may not have been resolved as completely as possible. In particular, the Department of Health is soliciting additional comment on the following areas:

1. How recreational waters should be defined and what standards should be applied to measure health risks associated with the recreational use of waters receiving wastewater effluent.

2. What mechanisms should be applied to assure the continued proper operation, maintenance and repair of discharging systems after they are installed. How can these mechanisms be assured when a property is sold?

Comments concerning any other aspect of these regulations will also be accepted. Comments must be received by the Health Department prior to 4:00 p.m. on January 29, 1993. Comments should be sent to Donald J. Alexander, Director, Division of Onsite Sewage and Water Services, Virginia Department of Health, P.O. Box 2448, Suite 117, Richmond, Virginia 23218.

OFFICE OF THE SECRETARY OF HEALTH AND HUMAN RESOURCES

† Notice to the Public

The Virginia Health Care Foundation will issue a request for proposals on November 16, 1992. The foundation seeks to fund primary care proposals that address unmet care needs in Virginia. All private and public organizations and agencies are invited to submit a proposal. For more information please contact Susan Pereles, Office of the Secretary of Health and Human Resources, P.O. Box 1475, Richmond, Virginia 23212, telephone (804) 786-7765.

UNIVERSITY OF VIRGINIA

Institute of Law, Psychiatry & Public Policy

Public Notice

The Sixteenth Annual Symposium on Mental Health and the Law will be held April 1-2, 1993, at the Richmond Hyatt (Thursday-Friday). The symposium is sponsored by The University of Virginia Institute of Law, Psychiatry and Public Policy; the Division of Continuing Education; the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services and the Office of the Attorney General. The symposium will be held at the Richmond Hyatt Hotel in Richmond, Virginia. Continuing education credit, including medical and legal, will be available. For further information contact: Bettie Amiss, Administrator, Institute of Law, Psychiatry and Public Policy, Box 100, Blue Ridge Hospital, Charlottesville, Virginia 22901; telephone (804) 924-5435.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

MARINE RESOURCES COMMISSION

Title of Regulation: **VR 450-01-0034. Pertaining to the Taking of Striped Bass.**

Publication: 8:25 VA.R. 4577-4582 September 7, 1992

Correction to Final Regulation:

Page 4577, column 2, § 3 B, line 2, strike "their."

Page 4577, column 2, § 4 A, line 1, after "open" insert "commercial."

Page 4577, column 2, § 4 A, line 2 change "season" to "seasons."

Page 4578, column 1, § 4 D 4, line 4 change "included" to "include."

Page 4578, column 1, § 5, catch line, after "size limits" insert "alterations prohibited,"

Page 4579, column 1, § 7 F, line 8, after "person to take" insert ", catch"

Page 4579, column 1, § 7 G, line 5, after "211,000 pounds" insert "during any calendar year."

Page 4579, column 1, § 8 B, line 2, after "rod-and-reel," strike "spear, or cast net" and insert ", or hand-line."

Page 4579, column 1, § 8 C, line 2, strike "permitted as described in § 10,"

Page 4580, column 2, § 10 F, line 9, after "Wednesday" insert "immediately."

CALENDAR OF EVENTS

Symbols Key
† Indicates entries since last publication of the Virginia Register
♿ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

DEPARTMENT FOR THE AGING

Long-Term Care Ombudsman Program Advisory Council

December 1, 1992 - 9:30 a.m. – Open Meeting
The Virginia Association of Homes for Adults, Inc., Suite 101, United Way Building, 224 West Broad Street, Richmond, Virginia. ♿

Business will include further discussion on the goals and objectives for the Virginia Long-Term Care Ombudsman Program.

Contact: Etta V. Hopkins, Assistant Ombudsman, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271/TDD ☎ or toll-free 1-800-552-3402.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

† **December 8, 1992 - 9 a.m.** – Open Meeting
Washington Building, Room 204, 1100 Bank Street, Richmond, Virginia. ♿

At this regular meeting, the board plans to discuss legislation, regulations, and fiscal matters and will receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of other business, the board will review public comments for a period not to exceed 30 minutes.

Contact: Roy E. Seward, Secretary to the Board, Washington Building, Room 211, 1100 Bank St., Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD ☎

Virginia Corn Board

† **December 3, 1992 - 10 a.m.** – Open meeting
Colonial Williamsburg Lodge, P.O. Box 1776, Williamsburg, Virginia. ♿

The board will meet in regular session to discuss issues related to the Virginia corn industry. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Rosser Cobb, Program Director, P.O. Box 26, Warsaw, VA 22572, telephone (804) 333-3710.

Virginia Marine Products Board

† **December 1, 1992 - 5:30 p.m.** – Open Meeting
Nick's Steak & Spaghetti House, Route 17, Gloucester Point, Virginia. ♿

The board will meet to receive reports from the Executive Director of the Virginia Marine Products board on finance, marketing, past and future program planning, publicity/public relations, and old and new business. At the conclusion of other business, the board will entertain public comments for a period not to exceed 30 minutes.

Contact: Shirley A. Estes, 544 Denbigh Boulevard, Suite B, Newport News, VA 23602, telephone (804) 874-3474.

Virginia Small Grains Board

† **December 4, 1992 - 10 a.m.** – Open Meeting
Department of Agriculture, Washington Building, 1100 Bank Street, Richmond, Virginia. ♿

This will be the first meeting of the board. This will

be an organizational meeting to discuss items related to small grains. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Rosser Cobb, Program Director, P.O. Box 26, Warsaw, VA 22572, telephone (804) 333-3710.

Virginia Soybean Board

† **December 1, 1992 - 10 a.m.** – Open Meeting
Colonial Williamsburg Lodge, P.O. Box 1776, Williamsburg, Virginia. ♿

The board will meet in regular session to discuss issues related to Virginia soybean industry.

Contact: Rosser Cobb, Program Director, P.O. Box 26, Warsaw, VA 22572, telephone (804) 333-3710.

DEPARTMENT OF AIR POLLUTION CONTROL

November 16, 1992 - 8 p.m. – Open Meeting
† **November 18, 1992 - 8 p.m.** – Open Meeting
The Rockingham County Administration Center, Harrisonburg, Virginia. ♿

A meeting to receive public comment on a request by Transprint USA to operate four existing rotogravure and to construct and operate a fifth rotogravure printing press at their facility in Harrisonburg.

Contact: Donald L. Shepherd, Director, Region II, Virginia Department of Air Pollution Control, 5338 Peters Creek Rd., Roanoke, VA 24019, telephone (703) 857-7328 or (804) 371-8471/TDD ☎

ALCOHOLIC BEVERAGE CONTROL BOARD

† **November 23, 1992 - 9:30 a.m.** – Open Meeting
2901 Hermitage Road, Richmond, Virginia. ™

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND LANDSCAPE ARTHICTECTS

† **December 3, 1992 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to: (i) approve minutes from September 3, 1992 meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) conduct regulatory review.

Contact: Willie Fobbs, III, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Architects

† **November 19, 1992 - 9:30 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to: (i) approve minutes from September 10, 1992 meeting; (ii) review correspondence; (iii) review enforcement files; (iv) review applications; and (v) conduct regulatory review.

Contact: Willie Fobbs, III, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Interior Designers

† **November 20, 1992 - 1 p.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) approve minutes from September 25, 1992 meeting; (ii) review applications; and (iii) review correspondence.

† **December 18, 1992 - 1 p.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) approve minutes from November 20, 1992 meeting; (ii) review applications; and (iii) review correspondence.

Contact: Willie Fobbs, III, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Landscape Architects

† **November 16, 1992 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) approve minutes from May 8, 1992 meeting; (ii) review correspondence, and (iii) review applications.

Contact: Willie Fobbs, III, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Land Surveyors

† **December 2, 1992 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) review minutes from September 2, 1992 meeting; (ii) review correspondence (iii) review enforcement files; and (iv) conduct regulatory review.

Contact: Willie Fobbs, III, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Professional Engineers

† **November 18, 1992 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) approve minutes from August 27, 1992 meeting; (ii) review correspondence; (iii) review enforcement files; (iv) review applications; and (v) conduct regulatory review.

Contact Willie Fobbs, III, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

BOARD FOR BRANCH PILOTS

† #BBDecember 10, 1992 - 9:30 a.m. – Open Meeting
The Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿

The regular quarterly meeting of the board to consider routine business.

Contact: Willie Fobbs, III, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 3, 1992 - 10 a.m. - Open Meeting
State Capitol, Senate Room 4, Capitol Square, Richmond, Virginia. ♿

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by November 24, 1992.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

DEPARTMENT OF COMMERCE

December 4, 1992 - 10:30 a.m. – Public Hearing
Roanoke City Council Chambers, Room 450, 215 Church Ave., S.W., Roanoke, Virginia

December 10, 1992 - 10:30 a.m. – Public Hearing

General Assembly Building, House Room D, Richmond, Virginia.

January 4, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Commerce intends to **repeal** regulations entitled **VR 190-05-1. Asbestos Licensing Regulations** and **adopt** new regulations entitled **VR 190-05-1:1. Asbestos Licensing Regulations.** The proposed regulations include a "Standard of practice and conduct" section to establish guidelines for professionalism and grounds for disciplinary action within the regulated disciplines. To eliminate duplication, a "General entry and renewal requirements" section has been added and requirements for an asbestos worker and supervisor license have been combined. Changes also require employers, with employees exempted from licensure, to develop and maintain a safety program, as opposed to training, to enhance the quality and safety of asbestos work. The proposed regulations set training provider criteria for record keeping, certificate information, length of training, training upgrade, number and ratio of instructors to students, primary instructor approval, use of videos, and training course approval.

For Asbestos Analytical Laboratory Licensure, participation in the PAT program will be extended to each branch facility and each on-site analyst will be required to register with the AIHA Analyst Registry. After April 1, 1993, project designer applicants will need to submit an experience form (Form A) with their application.

For clarification purposes, the following definitions have been added or altered: "Asbestos," "Asbestos Project," "Asbestos Project Design," "Asbestos Management Plan," "Demolition," "Full Approval," "Occupied," Preliminary Review," "Primary Instructor," "Removal," "Site," "Substantial Change," and "Structure."

In addition, fees have been lowered for an Asbestos Contractors license, an RFS Asbestos Contractors license, an Asbestos Analytical laboratory license, and for training course evaluations.

Statutory Authority: §§ 54.1-500 through 54.1-517 of the Code of Virginia.

Contact: Kent Steinruck, Regulatory Boards Administrator, Department of Commerce, 3600 West Broad St., Richmond, VA 23230, telephone (804) 367-2567.

STATE BOARD FOR COMMUNITY COLLEGES

November 18, 1992 - 2:30 p.m. – Open Meeting
Holiday Inn Fair Oaks, 11787 Lee-Jackson Highway, Fairfax, Virginia

State board committee meetings.

November 19, 1992 - 9 a.m. – Open Meeting
Holiday Inn Fair Oaks, 11787n Lee-Jackson Highway, Fairfax, Virginia.

A regularly scheduled state board meeting.

Contact: Joy Graham, Assistant Chancellor Public Affairs, Virginia Community College System, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2126, or (804) 371-8504/TDD ☎

COMPENSATION BOARD

November 30, 1992 - 5 p.m. – Open Meeting
December 30, 1992 - 5 p.m. – Open Meeting
Room 913/913A, 9th Floor, Ninth Street Office Building, 202 North Ninth Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request.)

A routine meeting to conduct business of the Compensation Board.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206-0686, telephone (804) 786-3886/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Rappahannock Scenic River Advisory Board

† **November 19, 1992 - 7:30 p.m.** – Open Meeting
Fauquier County Courthouse, 4th Floor Meeting Room, 40 Culpeper Street, Warrenton, Virginia.

A review of river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor Street, Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

† **December 15, 1992 - 10 a.m.** – Open Meeting
† **December 16, 1992 - 10 a.m.** – Open Meeting
† **December 17, 1992 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

A formal hearing (Tomac Corporation) regarding alleged violations of the regulations of the Board for Contractors.

Contact: A.R. Wade, Assistant Director of Investigation and Adjudication, 3600 W. Broad St., Richmond, VA, telephone (804)367-0946.

Complaints Committee

† **December 9, 1992 - 9 a.m.** – Open Meeting
3600 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

The Board for Contractors Complaints Committee will meet to review and consider complaints filed by consumers against licensed contractors.

Contact: A.R. Wade, Assistant Director of Investigation and Adjudication, 3600 W. Broad St., 5th Floor, Richmond, VA, telephone (804) 367-0136.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

November 18, 1992 - 10 a.m. – Open Meeting
December 16, 1992 - 10 a.m. – Open Meeting
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia. ♿

A regular monthly meeting of the board to consider matters as may be presented to the board.

Contact: Mrs. Vivian T. Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

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November 18, 1992 - 10:30 a.m. – Public Hearing
6900 Atmore Drive, Richmond, Virginia.

November 20, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to amend regulations entitled: **VR 230-30-001. Minimum Standards for Jails and Lockups.** The purpose of the proposed action is to incorporate the Work/Study Release Program Standards as an integral part of the Standards for Jails and Lockups.

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-131 of the Code of Virginia.

Contact: Mike Howerton, Chief of Operations, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3262.

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† **January 30, 1993** – Written comments may be submitted through this date.

† **February 10, 1993 - 10 a.m.** – Public Hearing
6900 Atmore Drive, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to **repeal** regulations entitled **VR 230-01-003, Regulations Governing the Certification Process,** and **adopt** regulations entitled **VR 230-01-003:1, Regulations Governing the Certification Process.** The proposed regulation establishes guidelines for certification evaluation, frequency, appeals and types of certification awarded the program. These standards will replace VR 230-01-003, Rules and Regulations Governing the Certification Process.

STATEMENT

Basis: Sections 53.1-5, 53.1-68, 53.1-141, 53.1-178 and 53.1-182 of the Code of Virginia mandate the Board of Corrections to establish program standards for the operation of authorized facilities and to monitor the activities of the Department of Corrections in implementing the standards.

Purpose: These standards have been developed to establish the documentation flow in the certification process, the appeal process and the waiver process for the evaluation of a program or facility and to measure the effectiveness in meeting the health, safety and welfare needs of the clients.

These standards provide uniform factors and a management tool in the evaluation of programs and facilities. These standards will replace VR 230-01-003, Rules and Regulations Governing the Certification Process.

Issues: Programs and facilities operated by, or contracted with, the Department of Corrections or the localities must comply with these standards in the certification process, appeal of findings and waiver of items.

Impact: These standards will impact all programs or facilities operated by, or contracted with, the Department of Corrections and the localities. They have been operating under standards since 1990, so there should be minimal increase in cost to the programs or facility for compliance. Failure to follow these rules and regulations may result in the program or facility not submitting required documentation in a timely manner thus resulting in the loss of certified status or a lower status. The fiscal impact of these standards on the department will be approximately $500 to be used primarily for printing and postage.

Statutory Authority: §§ 53.1-5, 53.1-68, 53.1-141, 53.1-178 and 53.1-182 of the Code of Virginia.

Contact: Cynthia J. Evans, Certification Analyst, 6900 Atmore Dr., Richmond, VA 23225, telephone (804)674-3237.

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† **January 30, 1993** – Written comments may be submitted through this date.

† **February 10, 1993 - 10 a.m.** – Public Hearing
6900 Atmore Drive, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to **repeal** regulations entitled **VR 230-30-004, Standards for Adult Community Residential Services,** and **adopt** regulations entitled **VR 230-30-004:1, Standards for Community Residential Programs.** The proposed regulation establishes the minimum standards that must be met for a facility or program to be properly certified to operate. These standards will replace VR 230-30-004, Adult Community Residential Services Standards.

STATEMENT

Basis: Sections 53.1-5 and 53.1-178 of the Code of Virginia mandate the Board of Corrections to establish program standards for the operation of authorized facilities and to monitor the activities of the Department of Corrections in implementing the standards.

Purpose: These standards have been developed to measure the effectiveness of community residential programs in meeting the health, safety and welfare needs of the residents in the programs.

Substance: These standards provide measurement factors and a management tool in the evaluation of community residential programs. These standards will replace VR 230-30-004, Adult Community Residential Services Standards.

Issues: Community residential programs operated by, or contracted with, the Department of Corrections, must meet these standards in order to operate as a certified facility.

Impact: These standards will impact community residential programs operated by, or contracted with, the Department of Corrections. The community residential programs have been operating under standards since 1981, so there should be minimal increase in cost to the community residential programs for compliance. Failure to meet minimum standards can result in the loss of certification which can lead to the loss of funding and possible closure of the facility or program. The fiscal impact of these standards on the department will be approximately $300 to be used primarily for printing and postage.

Statutory Authority: §§ 53.1-5 and 53.1-178 of the Code of Virginia.

Contact: R.M. Woodard, Regional Manager, 302 Turner Road, Richmond, VA 23225, telephone (804) 674-3732.

Liaison Committee

November 19, 1992 - 9:30 a.m. – Open Meeting
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia. ♿

The committee will continue to address and discuss criminal justice issues.

Contact: Mrs. Vivian T. Toler, Secretary to the board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

November 23, 1992 - 9 a.m. – Open Meeting
† **December 7, 1992 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting.

Contact: Demetra Y. Kontos, Assistant Director, Board for Cosmetology, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

BOARD OF DENTISTRY

November 21, 1992 - 9 a.m. – Open Meeting
Southern States Building, 6606 West Broad Street, Richmond, Virginia. ♿

The Regulatory-Legislative Committee will meet to discuss possible regulation changes. This meeting is open to the public. No public comment will be taken.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (BOARD OF)

November 24, 1992 - 8 a.m. – Open Meeting
James Monroe Building, Conference Rooms D and E, 101 North 14th Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request. Public comment will not be received at the meeting.

Contact: Dr. Margaret Roberts, Executive Director, Board of Education, P.O. Box 2120, Richmond, VA 23216, telephone (804) 225-2540.

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† **December 10, 1992 - 7 p.m.** – Public Hearing
Grace E. Metz Middle School, 9700 Fairview Avenue, Manassas, Virginia.

† **December 10, 1992 - 7 p.m.** – Public Hearing
Granby High School, 7101 Granby Street, Norfolk, Virginia.

December 10, 1992 - 7 p.m. – Public Hearing
Radford School Board Office, 1612 Wadsworth Street, Radford, Virginia.

December 10, 1992 - 7 p.m. – Public Hearing
Thomas Jefferson High School, 4100 West Grace Street, Richmond, Virginia.

January 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Education intends to amend regulations entitled: **VR 270-01-0002. Regulations Governing the Educational Program for Gifted Students.** This proposed regulation amends the existing regulations governing the educational program for gifted learners in Virginia. The changes reflect the most current literature and research relative to the identification of and programming for gifted students. These regulations are being promulgated to ensure that gifted students in kindergarten through grade 12 are identified and provided with an education program that will enable them to achieve to their abilities.

STATEMENT

Basis Section 22.1-253.13:1 of the Code of Virginia authorizes the Board of Education to promulgate regulations governing the educational program of gifted students.

Purpose: This proposed regulation amends the existing regulations governing the educational program for gifted learners in Virginia. The changes reflect the most current literature and research relative to the identification of and programming for gifted students. These regulations are being promulgated to ensure that gifted students in kindergarten through grade 12 are identified and provided with an education program that will enable them to achieve to their abilities.

Substance: School divisions are required to respond to these regulations by preparing and implementing a local plan for the education of gifted students. These regulations set forth the required components of that plan.

Issues: Presently, there are approximately 100,000 gifted students in the Commonwealth who require differentiated educational opportunities in order to meet their needs. It

has been seven years since the present regulations governing the educational program for gifted students were written. Since that time, a great deal of research has been conducted relative to the identification of gifted students and providing appropriate educational opportunities for them. This research suggests that changes are needed in how we identify and serve gifted students in Virginia if we are to enable our brightest students to reach their potential. The proposed changes in the regulations reflect the current research and the mission of the Department of Education. Furthermore, they provide guidance to school divisions in planning and implementing appropriate programs for gifted students.

Impact: Approximately 100,000 gifted students in the Commonwealth would be affected along with their parents. Additionally, administrators of gifted programs and teachers of gifted students in 135 school divisions would be impacted. Since the Department of Education already provides technical assistance regarding gifted programs to school divisions and reviews local plans for the education of the gifted, no additional costs are anticipated.

Statutory Authority: § 22.1-253.13:1 of the Code of Virginia.

Contact: Valerie Barrett, Associate Specialist, Gifted Programs, P.O. Box 2120, 20th Floor, Richmond, VA 23216, telephone (804) 225-2652.

STATE BOARD OF ELECTIONS

November 23, 1992 - 10 a.m. – Open Meeting
House Room 1, State Capitol, Richmond, Virginia. ♿

A meeting to ascertain and certify the results of the November 3, 1992, General and Special Elections.

Contact: Margaret O. "Jane" Jones, Executive Secretary Senior, State Board of Elections, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 786-6551, or toll free 800-552-9745/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

December 3, 1992 - 5:30 p.m. – Open Meeting
Chesterfield County Administration Building, 10,001 Ironbridge Road, Room 502, Chesterfield, Virginia. ♿

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236

LOCAL EMERGENCY PLANNING COMMITTEE - HANOVER COUNTY

December 8, 1992 - 9 a.m. – Open Meeting
Hanover Fire Company 5, Route 1004 at Route 301 North, Hanover, Virginia. ♿

A meeting to conduct the following business:

1. LEPC update.
2. Report from Chairman.
3. Report on Superfund sites - Route 735 & Route 629.
4. Preplanning for Hazardous Material - Full Exercise for 1993.
5. Old business/new business.
6. 15-minute discussion period.

Contact: John F. Trivellin, Hazardous Materials Coordinator, P.O. Box 470, Hanover County, VA 23069, telephone (804) 798-8554 or (804) 730-6195.

LOCAL EMERGENCY PLANNING COMMITTEE - HENRICO COUNTY

† **December 3, 1992 - 7 p.m.** – Open Meeting
The Henrico County Public Safety Building, Division of Fire, Parham and Hungary Spring Roads, Richmond, Virginia. ♿

A meeting to satisfy requirements of the Superfund Amendment and Reauthorization Act of 1986.

Contact: W. Timothy Liles, Assistant Emergency Services Coordinator, Division of Fire, P.O. Box 27032, Richmond, VA 23273, telephone (804) 672-4906.

LOCAL EMERGENCY PLANNING COMMITTEE - ROANOKE VALLEY

† **November 18, 1992 - 9 a.m.** – Open Meeting
Salem Civic Center, Room C, 1001 Roanoke Boulevard, Salem, Virginia. ♿

A meeting to (i) receive public comment; (ii) receive report from community coordinators; (iii) receive report from standing committees.

Contact: Danny W. Hall, Fire Chief/Coordinator of Emergency Services, 105 S. Market St., Salem, VA 24153, telephone (703) 375-3080.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† **December 2, 1992 - 3 p.m.** – Open Meeting
Shawnee Fire Company, 2333 Roosevelt Boulevard, Winchester, Virginia.

A general meeting.

Contact: L.A. Miller, Fire Chief, Winchester Fire & Rescue Department, 126 N. Cameron St., Winchester, VA 22601, telephone (703) 662-2298.

BOARD FOR GEOLOGY

December 18, 1992 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 1, Richmond, Virginia.

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, (804) 367-9753/TDD

GOVERNOR'S TASK FORCE ON FUELS TAX EVASION

† **November 30, 1992 - 9:30 a.m.** – Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia.

The task force will examine fuels tax legislation and the process and resources associated with fuels tax administration. No public comment will be received at this meeting.

Contact: Ralph M. Davis, Assistant Commissioner for Administrative Services, Room 710, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-6615.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

November 20, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to **repeal** regulations entitled **VR 370-01-000, Public Participation Guidelines** and **adopt** regulations entitled: **VR 370-01-000:1. Public Participation Guidelines.** This action repeals existing regulations and enacts new Public Participation Guidelines for soliciting the input of interested parties in the formation and development of regulations.

Statutory Authority: §§ 9-6.14.7:1 and 9-164 (2) of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., Sixth Floor, Richmond, VA 23219, telephone (804) 786-6371.

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November 21, 1992 – Written comments may be submitted through this date.

November 24, 1992 - 1 p.m. – Public Hearing
Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-001. The Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed action is to clarify the definition of "charity care" as utilized in the analysis of the various filings submitted by health care institutions.

Statutory Authority: §§ 9-158 (A) and 9-164 (2) of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

November 24, 1992 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road, Virginia Room, Richmond, Virginia.

A monthly meeting of the Virginia Health Services Cost Review Council followed by a public hearing to receive comments regarding HJR 237, which requires the council to study health care institutions' diversification into the commercial sector and its impact on small businesses and health care costs.

† **December 15, 1992 - 1:30 pm.** – Open Meeting
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

A regular monthly meeting.

Contact: Marcia Melton, Executive Secretary, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-3671.

VIRGINIA HISTORIC PRESERVATION FOUNDATION

† **November 18, 1992 - 10:30 a.m.** – Open Meeting
Sherwood Hall Regional Library, Fairfax County (Elm Springs), Virginia. (Interpreter for the deaf provided upon request)

A general business meeting.

Contact: Virginia McConnell, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD

DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

† **December 16, 1992 - 2 p.m.** – Open Meeting
General Assembly Building, Senate Room A, Richmond, Virginia.

A meeting to receive comments and answer questions on (i) the department's intent to develop and adopt a regulation setting forth the evaluation criteria and the procedure for nominating property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark; and (ii) the board's intent to develop and adopt a regulation setting forth the evaluation criteria and the procedures for designating Virginia landmarks.

Contact: Margaret T. Peters, Information Officer, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804)786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

December 1, 1992 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. (Interpreter for deaf provided upon request)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Amusement Device Technical Advisory Committee

† **November 25, 1992 - 9 a.m.** – Open Meeting
The Jackson Center, Second Floor Conference Room, 501 North Second Street, Richmond, Virginia.

A meeting to review and discuss regulations pertaining to the construction, maintenance, operation and inspection of amusement devices adopted by the Board of Housing and Community Development.

Contact: Jack A. Proctor, CPCA, Deputy Director, The Jackson Center, 501 N. Second St., Richmond, VA 23219-1321 telephone (804) 371-7150 or (804) 371-7089/TDD ☎

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

November 17, 1992 - 11 a.m. – Open Meeting
601 South Belvidere Street, Richmond, Virginia.

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

November 18, 1992 - 10 a.m. – Open Meeting
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

A regular meeting of the Council to discuss and/or act on:

1. Ratio on Davis Bacon work for construction.
2. Status of Dorey Electric Co. Apprenticeship Program.

Contact: Robert S. Baumgardner, Director, Apprenticeship Division, Department of Labor and Industry, 13 South 13th St., Richmond, VA 23219, telephone (804) 786-2381.

Migrant and Seasonal Farmworkers Board

November 18, 1992 - 10 a.m. – Open Meeting
State Capitol Building, House Room 2, Richmond, Virginia 23219.

A biennial meeting of the Board.

Contact: Marilyn Mandel, Director, Office of Planning and Policy Analysis, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th St., Richmond, VA 23219, telephone (804) 786-2385.

STATE COUNCIL ON LOCAL DEBT

† **November 18, 1992 - 11 a.m.** – Open Meeting
† **December 16, 1992 - 11 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia.

A regular meeting of the council subject to

cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804)225-4928.

STATE LOTTERY BOARD

November 23, 1992 - 10 a.m. – Open Meeting

2201 West Broad Street, Richmond, Virginia. ♿

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

MARINE RESOURCES COMMISSION

† **November 24, 1992 - 9:30 a.m.** – Open Meeting

2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ♿ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide fishery management items at approximately 12 noon. Items to be heard are as follows: regulatory proposals, fishery management plans, fishery conservation issues, licensing, shellfish leasing. Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues, and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Cathy W. Everett, Secretary to the Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-8088, (804) 247-2292/TDD ☎ , or toll-free 800-541-4646 .

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

November 20, 1992 – Written comments may be submitted through 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt and amend regulations entitled: **VR 460-01-29.4, 460-01-70, 460-02-2.2100, 460-02-2.6100, 460-02-4.2230, 460-04-4.2230. Health Insurance Premium Payment Program (HIPP).** The purpose of this proposal is to implement the mandates of § 1906 of the Social Security Act to provide for (i) the identification of cases in which the enrollment of Medicaid recipients in group health plans is likely to be cost effective; (ii) the requirement that recipients in such cases enroll in the available group health plan as a condition of continued eligibility for Medicaid; (iii) the provision for payment of premiums and other cost-sharing obligations for items and services otherwise covered by Medicaid; and (iv) the treatment of the group health plan as a third party liability resource resulting, thereby, in such plans becoming primary sources of health care payments for the affected Medicaid recipients.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted through November 20, 1992 at 4:30 p.m. to: C. Mack Brankley, Director, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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December 18, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: **VR 460-01-74 and 460-04-4.2600. Drug Utilization Review Program Regulations.** The purpose of this proposal is to promulgate permanent regulations consistent with the mandates of OBRA 90 § 4401 and with applicable state laws. The sections of the State Plan for Medical Assistance affected by this action are section 4 to which is added new preprinted pages 74 through 74b and new state regulations VR 460-04-4.2600.

The law, as enacted in OBRA 90, requires the states' DUR programs to focus on individuals receiving

outpatient drugs who do not reside in a nursing home. Currently, the Commonwealth does not have a DUR program applicable to individuals receiving outpatient drugs.

Congressional support for DUR stems from a longstanding belief that quality health care is more cost-effective than poor quality care. Numerous studies have shown that physicians may not always have the requisite pharmaceutical knowledge and training to prescribe only appropriate medication. In some studies, federal investigators found widespread patient misuse of prescription drugs including overuse, underuse, and lack of compliance with longstanding guidelines for appropriate drug use. The capacity of pharmaceuticals to cause harm has been recognized since the beginning of medicine. Today, drug induced illnesses have become a major health problem and often, inappropriate outpatient drug usage leads to the subsequent need for remedial health care services.

OBRA 90 § 4401 placed four key DUR requirements on DMAS: (i) implementation of a retrospective DUR; (ii) provision for prospective DUR before the dispensing of prescriptions; (iii) establishment of a DUR board; and (v) development of physician and pharmacist educational interventions and programs.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted through December 18, 1992, to Rebecca Miller, Pharmacy Consultant, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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January 2, 1993 – Written comments may be submitted through 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: **VR 460-04-8.14. Managed Care: "Medallion" Regulations.** The purpose of this proposal is to promulgate permanent regulations to supersede the current emergency regulation containing substantially the same policies.

House Bill 30, passed by the 1990 session of the General Assembly, directed the Department of Medical Assistance Services (DMAS) to develop a plan to test the feasibility of establishing a statewide managed care system for Medicaid patients. The plan was developed and submitted to the Committee of Health Care for All Virginians (SJR 118) on October 1, 1990. The committee examined the plan based on three criteria: (i) the feasibility of expanding the system, (ii) alternatives for the design and staffing of such a system, (iii) costs and benefits associated with the preferred options. DMAS subsequently was instructed to proceed with its coordinated care program, named "MEDALLION."

The Commonwealth has requested and received approval from the Health Care Financing Administration (HCFA) for a waiver under § 1915(b) of the Social Security Act. DMAS will provide coordinated care services to those selected Medicaid recipients of the Commonwealth.

The services provided by this waiver would establish and support Primary Care Providers (PCP) who would become recipient care managers responsible for coordination of "MEDALLION" recipients' overall health care. The PCP will assist the client in gaining access to the health care system and will monitor on an ongoing basis the client's condition, health care needs, and service delivery to include referrals to specialty care. This form of health care delivery is expected to foster a more productive physician/patient relationship, reduce inappropriate use of medical services, and increase client knowledge and use of preventive care.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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January 15, 1993 – Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled **VR 460-01-79.7, 460-02-3.1100, 460-02-3.1200, 460-03-3.1100, 460-03-3.1105, 460-02-4.1920. Amount, Duration, and Scope of Services: Discontinue Coverage of Certain Optional Drugs and Fertility Services.** The purpose of these proposed regulations is to (i) conform with federal requirements for rebates on certain drugs; (ii) redefine family planning services to exclude the coverage of certain fertility drugs and services; (iii) discontinue coverage of certain optional drugs; and (iv) modify the method of the payment of pharmaceutical dispensing fees to allow for more or less frequent dispensing as is appropriate per drug.

STATEMENT

Basis and authority: Section 32.1-324 of the Code of

Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews.

The Omnibus Budget Reconciliation Act of 1990, § 4401 (OBRA 90), provided for a state's optional coverage of certain drugs and drug categories that Congress determined to be optional. These are drugs which may be subject to high rates of inappropriate or fraudulent use.

Purpose: The purpose of these proposed regulations is to (i) conform with federal requirements for rebates on certain drugs; (ii) redefine family planning services to exclude the coverage of certain fertility drugs and services; (iii) discontinue coverage of certain optional drugs; and (iv) modify the method of the payment of pharmaceutical dispensing fees to allow for more or less frequent dispensing as is appropriate per drug.

Summary and analysis: The sections of the State Plan for Medical Assistance which are affected by this regulatory action are the preprinted page 79g providing for drug rebates, Attachment 3.1 A pertaining to services covered for the Categorically Needy, Attachment 3.1 B pertaining to services covered for the Medically Needy, Supplement 1 to Attachment 3.1 A & B and Attachment 4.19 B pertaining to Methods and Standards Used for Establishing Payment Rates - Other Types of Care. Moreover, this regulation adds a new supplement, Supplement 5, to Attachment 3.1 A&B.

Drug Rebates

OBRA 90, provides federal matching payment for drugs covered under a rebate agreement. This section mandated that the Secretary of Health and Human Services enter into agreements with drug manufacturers to provide specified rebates to state Medicaid programs on a quarterly basis in order for a state to receive federal matching dollars for those drugs. Payment for covered outpatient drugs of a manufacturer must be covered in a rebate agreement in effect between the manufacturer and the Secretary on behalf of all states. Payment may also be made if the rebate agreement is between the manufacturer and the state, if the Secretary has delegated authority to the state to enter into such agreements.

Once this proposed regulation (page 79g) is adopted as a permanent regulation, it will supersede the existing identical emergency regulation.

Each state is required to report to each manufacturer and to the Health Care Financing Administration (HCFA) the total number of dosage units of each covered outpatient drug dispensed under the plan during the quarter. Drug manufacturers must also make price reports to the Secretary each quarter.

Fertility Services and Drugs

In addition, and as directed by the Board of Medical Assistance Services (BMAS), the Department is proposing to exclude from Medicaid coverage agents when used to promote fertility.

Fertility and infertility services can be divided into two categories which include surgical interventions and drug treatments. Previously, DMAS included the coverage of both fertility (family planning services such as surgical sterilizations and birth control pills) and infertility services (such as penile implants and reversals of tubal ligations) under the broad category of family planning services. BMAS approved the revision of the DMAS' definition of family planning services to include only those services and drugs directed towards the prevention of pregnancy or planning of contraception.

Optional Drugs

OBRA 90 also allows the states to exclude any or all of 11 categories of drugs regardless of whether or not a rebate agreement is in effect with the manufacturer. These categories of drugs, known as "optional drugs," are generally considered not medically necessary or are drugs with a very high potential for abuse. The Department is reviewing these 11 categories for the purpose of determining whether coverage will continue or the drugs will be excluded. The categories currently excluded from coverage are anorexiants when used for weight loss, over-the-counter medications for non-nursing home residents, products when used for topical hair growth, and drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness (DESI drugs).

The BMAS also directed the Department to exclude from coverage drugs when their purpose is for cosmetic reasons or to promote hair growth. Therefore, DMAS is proposing to exclude from coverage Minoxidil, when it has been prescribed for hair growth and agents containing hydroquinone or its derivatives, which have been prescribed solely for the depigmentation of skin.

Technical changes have been made to move existing policy language from Supplement 1 to the newly established Supplement 5.

Expired Drugs

OBRA 90 also required that Medicaid programs not reimburse for drugs which had been determined to be expired by their manufacturers. This policy must be included in the State Plan to conform with federal law and policies of HCFA.

Pharmaceutical Dispensing Fees

Certain drugs have unique federally mandated dispensing and patient monitoring requirements. The current State Plan language allows DMAS to reimburse for only one dispensing fee per month per prescription. The recommended change would allow DMAS to modify dispensing fees to suit unique circumstances, like the requirement to dispense clozapine weekly.

New drugs are constantly entering the marketplace. The number of available drugs that are "high-tech" and/or have the ability to cause serious and harmful side effects in their users is increasing. One example is clozapine which is highly toxic to bone marrow and causes the depletion of the white blood cells, the cells that fight infection in individuals. Because of this, the FDA requires an extensive monitoring system for clozapine users. The monitoring system requires the drug to be dispensed in no more than a 7-day supply and only after the patient has a blood test to confirm an adequate level of white blood cells. Because of the unique dispensing requirements for this drug, a fee is paid each time this drug is dispensed.

Impact: The fiscal impact of this regulatory action is budget neutral.

Drug Rebates

Anticipated savings are based on projected federal rebate agreements with pharmaceutical manufacturers. States, such as Virginia, may continue their own agreements with pharmaceutical firms, through the minimum term of the contract, provided the contract complies with § 1927(a) of the Social Security Act and the manufacturer's rebate totals at least 10% of the manufacturer's sales to the Virginia Medicaid program. The OBRA 90 drug rebate program is anticipated to result in GF savings of $6.5 million in FY 92. These dollars have already been accounted for in the DMAS budget.

Fertility Services and Drugs

Annual expenditures for clomiphene - the primary agent which is used to promote fertility - and various surgical procedures used to promote fertility, are approximately $29,646 annually ($2,964 GF; $26,682 NGF). These drugs and procedures are matched with federal funds at the 90% rate resulting in a significantly reduced impact on the General Fund.

Optional Drugs

Medicaid expenditures for cosmetic drug products, specifically hydroquinone skin creams used to lighten freckles, are approximately $12,938 annually ($6,469 GF; $6,469 NGF).

Expired Drugs

Pharmacists are prohibited by law from dispensing drugs which have expired. Therefore, DMAS does not expect to receive claims for such drugs. The State Plan must reflect this policy but there is no concomitant fiscal impact.

Pharmaceutical Dispensing Fees

At the present time, the drug clozapine is the only drug covered by Medicaid which requires dispensing more than once a month. Medicaid has about 208 patients who used clozapine during FY '92. The cost of the more frequent dispensing, as necessitated by the drug, was approximately $19,000 during FY '92.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on January 15, 1993, to Rebecca Miller, Pharmacy Consultant, Division of Policy and Research, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

BOARD OF MEDICINE

Joint Advisory Committees on Acupuncture

December 3, 1992 - 2 p.m. – Open Meeting
6606 West Broad Street, Fourth Floor, Board Room 2, Richmond, Virginia. 🗟

The committees will meet to review the final draft of proposed Regulations for Licensure of Acupuncturists and make recommendations to the Board of Medicine. The presiding chairman may entertain public comments on specific items as they relate to the proposed regulations. This is not a public hearing.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

Executive Committee

December 11, 1992 - 9 a.m. – Open Meeting
Board Room 1, 6606 West Broad Street, Richmond, Virginia. 🗟

The Executive Committee will meet in open and closed sessions to review cases for closing, cases or files requiring administrative action, review and approve proposed regulations for the practice of acupuncturists, and consider any other items which may come before the Committee. The Executive Committee may receive public comments on specific items at the pleasure of the Chairman.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

Credentials Committee

December 12, 1992 - 8 a.m. – Open Meeting
Board Room 1, 6606 West Broad Street, Richmond, Virginia.

The Credentials Committee will meet in open and closed sessions to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and discuss any other items which may come before the committee. The Credentials Committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

Advisory Board on Physical Therapy

NOTE: CHANGE IN MEETING DATE
November 20, 1992 - 9 a.m – Open Meeting
Brookfield Centre, 6606 West Broad Street, Richmond, Virginia.

A meeting to (i) review the regulations, (ii) elect officers, (iii) review the licensure examinations, and (iv) receive other reports relating to the practice of physical therapy.
The Chairperson may entertain public comments at her pleasure.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **December 2, 1992 - 10 a.m.** – Open Meeting
District 19 Community Services Board, Petersburg, Virginia.

A regular monthly meeting. The agenda will be published on November 24 and may be obtained by calling Jane Helfrich.

Contact: Jane V. Helfrich, Board Administrator, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

† **December 3, 1992 - 7 p.m.** – Open Meeting
502 South Main Street #4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget and other related business. Then the CCRB will meet to review cases before for eligibility to participate with the program. It will review the previous month's operation (budget and program related business).

Contact: Lisa Ann Peacock, Program Director, 502 S. Main St., Culpeper, VA 22701, telephone (703) 825-4562.

DEPARTMENT OF MOTOR VEHICLES

November 20, 1992 – Written comments may be submitted through 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to adopt regulations entitled: **VR 485-60-9202. Salvage Act Regulations.** The proposed regulation is to be used in the administration of the 1992 Salvage Act. The regulation will (i) provide additional definitions; (ii) allow exemptions from certain provisions of the Act under certain circumstances; (iii) furnish additional processing guidelines for individual entities; and (iv) further define departmental examination requirements.

Statutory Authority: § 46.2-203 of the Code of Virginia.

Contact: L. Steve Stupasky, Project Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1939.

VIRGINIA MUSEUM OF FINE ARTS

Collections Committee

† **November 17, 1992 - 2 p.m.** – Open Meeting
2800 Grove Avenue, Richmond, Virginia.

The Collections Committee will meet to consider art works offered as gifts, for purchase, and as loans. (Recommendation to the full board for approval of above art.)

Contact: Emily C. Robertson, Secretary of the Museum, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Board of Trustees

† **November 19, 1992 - Noon** – Open Meeting
2800 Grove Avenue, Richmond, Virginia.

A regularly scheduled meeting of the Full Board of Trustees to discuss trustee and staff reports, budget review, and approval of art acquisitions.

Contact: Emily C. Robertson, Secretary of the Museum, 2800 Grove Ave., Richmond, VA 23221-2466, telephone

(804) 367-0553.

Finance Committee

† **November 19, 1992 - 11 a.m.** – Open Meeting
2800 Grove Avenue, Richmond, Virginia. ♿

A meeting of the Finance Committee of the Board of Trustees for budget review and discussion.

Contact: Emily C. Robertson, Secretary of the Museum, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

BOARD OF NURSING

November 16, 1992 - 9 a.m. – Open Meeting
November 17, 1992 - 9 a.m. – Open Meeting
November 18, 1992 - 9 a.m. – Open Meeting
Department of Health Professions, Conference Room 1, 6606 West Broad Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

Regular meeting of the Virginia Board of Nursing to consider matters relating to nursing education programs, discipline of licensees, licensure by examination and endorsement and other matters under the jurisdiction of the Board. Public comment will be received during an open forum session beginning at 11 a.m. on Monday, November 16, 1992.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or (804 662-7197/TDD ☎

BOARDS OF NURSING AND MEDICINE

November 30, 1992 - 1 p.m. – Open Meeting
Department of Health Professions, Conference Room 1, 6606 West Broad Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request.

A formal hearing with licensee. Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

† **December 1, 1992 - 10 a.m.** – Open Meeting
Brookfield Office Park, 6606 West Broad Street, Room 3 - South, Richmond, Virginia. ♿

Informal conferences.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9111.

VIRGINIA OUTDOORS FOUNDATION

November 16, 1992 - 10:30 a.m. – Open Meeting
State Capitol, House Room 1, Richmond, Virginia. ♿

A general business meeting.

Contact: Tyson B. Van Auken, Executive Director, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-5539.

DEPARTMENT OF STATE POLICE

December 18, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-00-01. Public Participation Policy.** This regulation sets forth the policy of the Department of State Police to seek public participation when proposing regulations or substantive changes to present regulations.

Statutory Authority: §§ 9-6.14:7.1, 46.2-1165, 52-8.4, and 54.1-4009 of the Code of Virginia.

Contact: Captain J. P. Henries, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

BOARD OF PROFESSIONAL COUNSELORS

† **December 11, 1992 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A meeting to (i) conduct general board business; (ii) respond to committee reports and board correspondence; and (iii) conduct regulatory review.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

December 4, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Professional Soil Scientists intends to amend regulations entitled: **VR 627-02-01. Board for Professional Soil Scientists.** The purpose of the proposed amendments is to adjust

fees, insert waiver language, and clarify core course requirements.

Statutory Authority: § 54.1-201 and Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1.

Contact: Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone

December 14, 1992 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 1, 5th Floor, Richmond, Virginia 23230.

A general meeting of the board.

Contact: Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎ (804) 367-8595.

REAL ESTATE BOARD

† **November 19, 1992 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business including review of application, disciplinary cases, correspondence, etc. The board will also consider promulgating emergency regulations to comply with statutory amendments.

Contact: Joan L. White, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

REAL ESTATE APPRAISER BOARD

December 15, 1992 - 10 a.m. – Open Meeting
January 5, 1993 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

November 20, 1992 - 8:30 a.m. – Open Meeting
December 18, 1992 - 8:30 a.m. – Open Meeting
Tyler Building, Suite 208, Office of Coordinator, Interdepartmental Regulation, 1603 Santa Rosa Road, Richmond, Virginia.

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† **November 18, 1992 - 10 a.m.** – Open Meeting
Albemarle County Office Building, Room 7, 401 McIntire Road, Charlottesville, Virginia.

1. Appeal of Dennis Dinneen, Tax Map 74, Parcel 31A and B, Fauquier County.
2. Appeal of Frank Shillingburg, Jr., Tax Map 58-12-1-6-33-3, Shenandoah County.
3. Appeal of Everett M. and Jewel J. Huff, Lot 15, Wildwood Valley Subdivision, Greene County.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main St., P.O. Box 2447, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

† **January 15, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled **VR 615-01-48. General Relief Program - Deeming Income From Alien Sponsors.** This regulation makes policy in the General Relief Program consistent with policy in the Aid to Families with Dependent Children Program which requires considering the income and resources of the alien's sponsor for three years after the alien's entry into the U.S. as a permanent resident when determining program eligibility.

STATEMENT

Basis: These regulations are issued authority granted to the Department of Social Services by § 63.1-25 of the Code of Virginia.

Purpose: This regulation makes policy in the General Relief Program consistent with policy in the Aid to Families with Dependent Children Program which requires considering the income and resources of the alien's sponsor when determining program eligibility.

Substance For the purpose of determining eligibility for General Relief benefits, the income and resources of any person who (as a sponsor of an alien's entry into the United States) executed an affidavit of support or similar agreement with respect to the alien, shall be considered to be the unearned income of the alien for a period of three years after the alien's entry into the United States as a permanent resident.

Issues: Whether the Department of Social Services should revise the General Relief Program policy to consider the previously disregarded resources and income of a sponsor when determining the eligibility of a sponsored alien for General Relief.

Impact: Fewer sponsored aliens may be eligible for General Relief or may be eligible for a reduced amount due to deeming of the sponsors' income and resources. This could result in more assistance being available to General Relief applicants who do not have the benefit of sponsorship and therefore make better use of the limited amount of General Relief funds. Sponsors would have to fulfill their obligation to the aliens and to the United States government by providing the alien's the support they guaranteed as a condition of the alien's entry into the United States.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted through January 15, 1993, to Diana Salvatore, Program Manager, Medical Assistance Unit, 8007 Discovery Dr., Richmond, VA 23229.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

DEPARTMENT OF TAXATION

December 1, 1992 - 10 a.m. – Public Hearing
State Capitol, House Room 4, Capitol Square, Richmond, Virginia.

December 18, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-442. Consolidated and Combined Returns.** The purpose of the proposed regulation is to provide guidance to filers of consolidated and combined Virginia tax returns in computing the Virginia modification to the federal N.O.L. and other areas.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

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December 1, 1992 - 10 a.m. – Public Hearing
State Capitol, House Room 4, Capitol Square, Richmond, Virginia.

December 18, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-446. Intragroup Transactions and VR 630-3-446. Corporation Income Tax: Foreign Sales Corporations.** The purpose of this amendment is to clarify and provide guidance for the Virginia tax treatment of transactions between members of a corporate group.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

COMMONWEALTH TRANSPORTATION BOARD

November 18, 1992 - 2 p.m. – Open Meeting
Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Work session of the Commonwealth Transportation Board and the Department of Transportation staff.

November 19, 1992 - 10 a.m. – Open Meeting
Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia 23219. (Interpreter for the deaf provided upon request).

A monthly meeting of the Commonwealth Transportation Board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring Board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The Board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-6670.

TREASURY BOARD

† **November 18, 1992 - 9 a.m.** – Open Meeting
† **December 16, 1992 - 9 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ♿

A regular meeting of the board.

Contact: Linda F. Bunce, Administrative Assistant to the Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 225-2142.

GOVERNOR'S COMMISSION ON VIOLENT CRIME

† **December 1, 1992 - 9:30 a.m.** – Open Meeting
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request.)

Members will finalize proposals to the legislative package.

Contact: Kris Ragan, Special Assistant, Research Center, 701 E. Franklin St., 9th Floor, Richmond, VA 23219, telephone (804) 371-0530.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

† **January 9, 1993 - 11 a.m.** – Open Meeting
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request.)

The Advisory Committee on Services will meet to advise the board on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, (804) 371-3140/TDD ☎ , or toll-free (800) 622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

December 3, 1992 - 10 a.m. – Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

The purpose of this hearing is to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the Formulary add and delete drugs and drug products to the Formulary that became effective on February 1, 1992, and the most recent supplement to that Formulary. Copies of the proposed revisions to the Formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on December 3, 1992, will be made a part of the hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B 1-9, Richmond, VA 23219, telephone (804) 786-4326.

January 14, 1993 - 10:30 a.m. – Open Meeting
1100 Bank Street, Washington Building, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining the the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B 1-9, Richmond, VA 23219, telephone (804) 786-4326.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

November 17, 1992 - 9 a.m. – Open Meeting
Holiday Inn Express, 940 East Main Street, Abingdon, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Virginia Waste Management Board will tour the Pittson Coal Mine, McClure, Virginia, at 10 a.m., and the Clinch River Power Plant, Carbo, Virginia, at 2 p.m. This is a tour only. No decisions will be made and no business will be discussed.

Contact: Loraine Williams, Executive Secretary, 101 N. 14th St., Monroe Building, 11th Floor, Richmond, VA 23219, telephone (804) 225-2998 or (804) 371-8737/TDD ☎

November 18, 1992 - 9 a.m. – Open Meeting
Washington County Administration Building, 205 Academy Drive, Abingdon, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting. Staff will seek adoption of Amendment 12 of the Hazardous Waste Management Regulation (VR 672-10-1). Staff will seek adoption of Public Participation Guidelines Regulation (VR 672-01-1).

Contact: Loraine Williams, Executive Secretary, 101 N. 14th St., Monroe Building, 11th Floor, Richmond, VA 23219, telephone (804) 225-2998 or (804) 371-8737/TDD ☎

November 19, 1992 - 7 p.m. – Public Hearing
War Memorial Building, Lord Fairfax Room, 101 East Cork

Street, Winchester, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit amendment for an Industrial Landfill located on Abex Corporation property at approximately 3,000 feet west of interstate 81 in Winchester. The permit amendment was drafted by the department for Abex Corporation, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the draft permit. The public comment period will extend until November 30, 1992. Copies of the proposed draft permit may be obtained from Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand.

Contact: Aziz Farahmand, Environmental Engineer Consultant, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515.

November 23, 1992 - 7 p.m. – Public Hearing
Department of Public Utility, Operation Conference Room, 10401 Woodman Road, Glen Allen, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit for expansion of Springfield Road Sanitary Landfill located on the north western portion of Henrico County. The permit was drafted by the department for Henrico County, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the permit. The public comment period will extend until 5 p.m., December 3, 1992. Copies of the proposed draft permit may be obtained from Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand.

Contact: Aziz Farahmand, Environmental Engineer Consultant, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515.

November 24, 1992 - 7 p.m. – Public Hearing
General District Court Room, County Court House, Spotsylvania, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit for expansion of Sanitary Landfill located on State Route 602 east of State Route 208 approximately three miles southeast of Brokenburg. The permit was drafted by the department for Spotsylvania County, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding technical merits of the draft permit. The public comment period will extend until December 4, 1992. Copies of the proposed draft permit may be obtained from Brian McReynolds, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

Contact: Brian McReynolds, Environmental Engineer Senior, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515

December 1, 1992 - 7 p.m. – Public Hearing
City of Roanoke, Council Chambers, 215 Church Avenue, S.W., Roanoke, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit for a solid waste transfer station located on Hollins Road, south of Orange Avenue and within the corporate limits of the City of Roanoke, Virginia. The permit was drafted by the department for Roanoke Valley Resources Authority, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding technical merits of the draft permit. The public comment period will extend until December 11, 1992. Copies of the proposed draft permit may be obtained from Paul Farrell, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

Contact: Paul Farrell, Environmental Engineer Senior, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515

† **December 3, 1992 - 9 a.m.** – Open Meeting
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

This will be a general business meeting of the board. Staff will seek approval for amendment of the Solid Waste Management Regulations. The department staff

will give a presentation on enforcement activities.

Contact: Loraine Williams, Executive Secretary, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2998 or (804) 371-8737/TDD ☎

December 3, 1992 - 7 p.m. – Public Hearing
Pulaski County Administration Building, Pulaski County, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the Department of Waste Management will hold a public hearing on the draft permit for a sanitary landfill to be located north of Route 627 in Pulaski County. The permit was drafted by the Department of Waste Management for New River Resource Authority, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the draft permit. The public comment period will extend until December 14, 1992. Copies of the proposed draft permit may be obtained from Aziz Farahmand, Department of Waste Management. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management.

Contact: Aziz Farahmand, Environmental Engineer Consultant, 11th Floor, Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515.

December 9, 1992 - 7 p.m. – Public Hearing
Giles County Administration Building, 120 North Main Street, Pearisburg, Virginia.

Pursuant to the requirements of Part VII of the Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the Department of Waste Management will hold a public hearing on the proposed draft permit for an industrial landfill to be located on State Route 460 adjacent to the New River on Hoechst Celanese property in the township of Narrows. The permit was drafted by the Department of Waste Management for Hoechst Celanese, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments concerning the technical merits of the permit as they pertain to the landfill design, operation and closure. The public comment period will extend until December 21, 1992. Comments concerning the draft permit must be in writing and addressed to Brian McReynolds. Copies of the draft permit may also be obtained by writing Brian McReynolds, Department of Waste Management.

Contact: Brian McReynolds, Environmental Engineer Senior, Virginia Department of Waste Management, 11th Floor, Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-2520.

† **December 16, 1992 - 7 p.m.** – Public Hearing
New County Administration Building, 2nd and Washington, Amherst, Virginia.

Pursuant to the requirements of Part VII of the Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the Department of Waste Management will hold a public hearing on the proposed draft permit for an industrial landfill to be located on Georgia Pacific property adjacent to the James River in the township of Big Island. The permit was drafted by the Department of Waste Management for Georgia Pacific, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments concerning the technical merits of the permit as they pertain to the landfill design, operation and closure. The public comment period will extend until December 28, 1992. Comments concerning the draft permit must be in writing and addressed to Brian McReynolds. Copies of the draft permit may also be obtained by writing Brian McReynolds.

Contact: Brian McReynolds, Environmental Engineer Senior, 11th Floor, Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-2520

December 21, 1992 - 10 a.m. – Open Meeting
Virginia Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia. ♿

An informational meeting will be held for Amendment 11 to the Virginia Regulations Governing the Transportation of Hazardous Materials. The proposed amendment will incorporate by reference changes that were made by U.S. DOT to Title 49, Code of Federal Regulations from July 1, 1991, to July 1, 1992.

Contact: C. Ronald Smith, Hazardous Waste Enforcement Chief, Virginia Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-4761 or (804) 371-8737/TDD ☎

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December 21, 1992 - 11 a.m. – Public Hearing
Department of Waste Management, 101 North 14th Street, 11th Floor, Monroe Building, Richmond, Virginia.

December 21, 1992 – Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials (Amendment 11).** The purpose of this proposed amendment is to incorporate by reference changes that were made by U.S. DOT Title 49, Code of Federal Regulations from

July 1, 1992, to June 1, 1992.

Statutory Authority: §§ 10.1-1402 and 10.1-1450 of the Code of Virginia.

Written comments may be submitted until 5 p.m., December 21, 1992, to John E. Fly, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

Contact: C. Ronald Smith, Hazardous Waste Enforcement Chief, Virginia Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-4761.

STATE WATER CONTROL BOARD

November 16, 1992 - 7 p.m. – Public Hearing
King George High School, 9 West Dahlgren Road, King George, Virginia.

The State Water Control Board will hold a public hearing to receive comments regarding the proposed issuance or denial of the proposed Virginia Water Protection Permit. This informal fact-finding proceeding is being held pursuant to § 9-6.14:11 of the Code of Virginia, Part III of the Virginia Water Protection Permit Regulation and the Board's Procedural Rule No. 1.

Contact: Lori Freeman Jackson, Hearings Reporter, Office of Policy Analysis, State Water Control Board, P.O. Box 11143, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5163.

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December 9, 1992 - 7 p.m. – Public Hearing
University of Virginia Southwest Center, Highway 19 North, Abingdon, Virginia.

December 10, 1992 - 11 a.m. – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

December 10, 1992 - 7 p.m. – Public Hearing
Harrisonburg City Council Chambers, 345 South Main Street, Harrisonburg, Virginia.

December 14, 1992 - 7 p.m. – Public Hearing
Prince William County Complex, Board Room, McCourt Building, 4850 Davis Ford Road, Prince William, Virginia.

December 16, 1992 - 2 p.m. – Public Hearing
State Water Control Board, Innsbrook Corporate Center, Board Room, 4900 Cox Road, Glen Allen, Virginia.

December 17, 1992 - 1 p.m. – Public Hearing
Virginia Beach City Council Chambers, City Hall, Courthouse Drive, Virginia Beach, Virginia.

December 30, 1992 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-01-01. Fees for Permits and Certificates.** The purpose of the proposed regulation is to establish a fee assessment and collection system to recover a portion of costs associated with the processing of an application to issue, reissue, or modify any permit or certificate which the board has the authority to issue.

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on Monday, December 30, 1992, to Ms. Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Pat Woodson, Policy Analyst, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5166.

THE COLLEGE OF WILLIAM AND MARY

Board of Visitors

December 4, 1992 - 9 a.m. – Open Meeting
Richard Bland College, 11301 Johnson Road, Petersburg, Virginia.

A regularly scheduled meeting of the Board of Visitors of the College of William and Mary to act on those resolutions that are presented by the administrations of William and Mary and Richard Bland College. An informational release will be available four (4) days prior to the board meeting for those individuals and/or organizations who request it.

Contact: William N. Walker, Director, Office of University Relations, James Blair Hall, Room 101C, College of William and Mary, Williamsburg, VA 23185, telephone (804) 221-1005.

VIRGINIA DEPARTMENT OF
YOUTH & FAMILY SERVICES
Youth Begins With You.

DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

December 3, 1992 - 9 a.m. – Open Meeting
Koger Center, Nelson Building, Suite 211, 1503 Santa Rosa Road, Richmond, Virginia. (Interpreter for the deaf provided upon request)

December 10, 1992 - 9 a.m. – Open Meeting
Koger Center, Culpeper Building, Suite 135, 1606 Santa Rosa Road, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request.

A general business meeting to effect the Comprehensive Services Act for At-Risk Youth and Families. Please confirm meeting details before planning to attend.

Contact: Dian McConnell, Director, Council on Community Services for Youth & Families, 700 Centre, 4th Floor, Richmond, VA 23219, telephone (804) 371-0771.

LEGISLATIVE

COMMISSION ON CAPITAL FINANCING

November 30, 1992 - 1 p.m. – Open Meeting
General Assembly Building, House Room C, Richmond, Virginia.

The commission will continue to discuss difficulties encountered by small businesses who wish to obtain capital financing.

Contact: Jeffrey F. Sharp, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

November 18, 1992 - 9:30 a.m. – Open Meeting
General Assembly Building, 6th Floor Conference Room, 910 Capitol Street, Richmond, Virginia.

The Commission will continue with its revision of Title 4.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE NEEDS OF FOREIGN-BORN RESIDENTS IN THE COMMONWEALTH

November 24, 1992 - 10 a.m. – Open Meeting
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

The subcommittee will meet for a work session. HJR 97

Contact: Gayle Nowell, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE INCENTIVES AND OBSTACLES FACING BUSINESSES WHEN MAKING LOCATION DECISIONS IN VIRGINIA

† **December 9, 1992 - 1 p.m.** – Open Meeting
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

This work session is a continuation of HJR 448 from 1991. HJR 41.

Contact: Maria J.K. Everett, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

November 16, 1992 - 9:30 a.m. – Open Meeting
Roslyn Conference Center, Richmond, Virginia. ♿

A meeting to discuss requested changes in the draft "Act."

Contact: Lynn Churchill, Administrative Assistant, General Assembly Building, Room 519B, 910 Capitol Street, Richmond, VA 23219, telephone (804) 371-4949.

CHRONOLOGICAL LIST

OPEN MEETINGS

November 16, 1992
Air Pollution Control, Department of
† Landscape Architects, Board for
Nursing, Board of
Population Growth and Development, Commission on
Virginia Outdoors Foundation

November 17, 1992
Housing Development Authority, Virginia
† Museum of Fine Arts, Virginia
- Collections Committee
Nursing, Board of
Waste Management Board, Virginia

November 18
† Air Pollution Control, Department of
Commonwealth Transportation Board
Community Colleges, State Board for
Corrections, Board of
† Emergency Planning Committee, Local - Roanoke Valley
† Historic Preservation Foundation, Virginia
Labor and Industry, Department of
- Migrant and Seasonal Farmworkers Board
- Virginia Apprenticeship Council
† Local Debt, State Council on

Nursing, Board of
† Professional Engineers, Board for
† Sewage Handling and Disposal Appeals Review Board
† Treasury Board
Waste Management Board, Virginia

November 19
† Architects, Board for
Commonwealth Transportation Board
Community Colleges, State Board for
Corrections, Board of
- Liaison Committee
† Museum of Fine Arts, Virginia
- Finance Committee
- Board of Trustees
† Rappahannock Scenic River Advisory Board
† Real Estate Board

November 20
† Interior Designers, Board for
Medicine, Board of
- Advisory Board of Physical Therapy
Residential Facilities for Children, Interdepartmental Regulation of
- Coordinating Committee

November 21
Dentistry, Board of

November 23
† Alcoholic Beverage Control Board
Cosmetology, Board for
Elections, State Board of
Lottery Board, State

November 24
Education, Board of
Foreign-born Residents in the Commonwealth, Joint Subcommittee Studying the Needs of
Health Services Cost Review Council, Virginia
† Marine Resources Commission

November 25
† Housing and Community Development, Board of
- Amusement Device Technical Advisory Committee

November 30
Capital Financing, Commission on
Compensation Board
† Governor's Task Force on Fuels Tax Evasion
Nursing and Medicines, Board of

December 1
Aging, Department for the
- Long-Term Care Ombudsman Program Advisory Council
† Agriculture and Consumer Services, Department of
- Virginia Marine Products Board
† Nursing Home Administrators, Board of
Hopewell Industrial Safety Council
† Soybean Board, Virginia
† Violent Crime, Governor's Commission on

December 2
† Emergency Planning Committee, Local - Winchester
† Land Surveyors, Board for
† Mental Health, Mental Retardation and Substance Abuse Services Board, State

December 3
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
Chesapeake Bay Local Assistance Board
† Corn Board, Virginia
Emergency Planning Committee, Local - Chesterfield County
† Emergency Planning Committee, Local - Henrico County
Medicine, Board of
- Joint Advisory Committees on Acupuncture
† Middle Virginia Board of Directors and the Middle Virginia Community Corrections
† Waste Management Board, Virginia
Youth and Family Services, Department of
- State Management Team of the Comprehensive Services Act for At-Risk Youth and Families

December 4
College of William and Mary in Virginia
- Board of Visitors
† Small Grains Board, Virginia

December 7
† Cosmetology, Board for

December 8
† Agriculture and Consumer Services, Board of
Local Emergency Planning Committee, Hanover County

December 9
† Contractors, Board for
- Complaints Committee
† Incentives and Obstacles Facing Businesses When Making Location Decisions in Virginia, Joint Subcommittee Studying the

December 10
† Branch Pilots, Board for
Youth and Family Services, Department of
- State Management Team of the Comprehensive Services Act for At-Risk Youth and Families

December 11
Medicine, Board of
- Executive Committee
† Professional Counselors, Board of

December 12
Medicine, Board of
- Credentials Committee

December 14
Professional Soil Scientists, Board for

December 15
† Contractors, Board for
† Health Services Cost Review Council, Virginia
Real Estate Appraiser Board

December 16
† Contractors, Board for
Corrections, Board of
† Historic Resources, Board of
† Historic Resources, Department of
† Local Debt, State Council on
† Treasury Board

December 17
† Contractors, Board for

December 18
Geology, Board for
† Interior Designers, Board for
Residential Facilities for Children, Interdepartmental Regulation of
- Coordinating Committee

December 21
Waste Management, Department of

December 30
Compensation Board

January 5, 1993
Real Estate Appraiser Board

January 9
† Visually Handicapped, Department for the
- Advisory Committee on Services

January 14
Voluntary Formulary Board, Virginia

PUBLIC HEARINGS

November 16
Water Control Board, State

November 18
Corrections, Department of (State Board)

November 19
Waste Management, Department of

November 23
Waste Management, Department of

November 24
Health Services Cost Review Council, Virginia
Waste Management, Department of

December 1
Taxation, Department of
Waste Management, Department of

December 3
Voluntary Formulary Board, Virginia
Waste Management, Department of

December 4
Commerce, Department of

December 9
Waste Management, Department of
Water Control Board, State

December 10
Commerce, Department of
† Education, Department of
Water Control Board, State

December 14
Water Control Board, State

December 16
† Waste Management, Department of
Water Control Board, State

December 17
Water Control Board, State

December 21
Waste Management, Department of

February 10, 1993
† Corrections, Department of